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The Coalition for Affordable & Quality Care is concerned about the process and the substance of the Granholm Administration's proposed changes to administrative rules governing 5,000 Adult Foster Care (AFC) and Home for the Aged (HFA) settings statewide.

Coalition members include: Michigan Assisted Living Association (MALA), Michigan Association of Community Mental Health Boards (MACMHB), Michigan Center For Assisted Living (MCAL) and Health Care Association of Michigan (HCAM).

Currently, 48,000 adults reside in these state regulated settings. Approximately 34,000 adults reside in settings licensed as Adult Foster Care (AFC) homes and approximately 14,000 adults reside in licensed Home for the Aged (HFA) settings.

**These proposed rules would divert direct care from residents to duplicative administrative tasks, drive up costs to consumers and invade worker privacy without adding any significant direct benefits for consumers.**

If implemented, these proposed rules would:

- Threaten to divert direct services from Adult Foster Care (AFC) and Home for the Aged (HFA) residents to redundant administrative responsibilities;
- Favor Adult Foster Care (AFC) and Home for the Aged (HFA) settings with union activity;
- Impose additional costs of regulatory compliance whereby homes that serve persons with limited income and reimbursement could not continue to operate, lessening the choices available to individuals who rely on public funding;
- Require each Adult Foster Care (AFC) and Home for the Aged (HFA) licensee – of which there are 5,500 statewide – to establish health and safety committees to do work that is already being done as required by current law; and
- Invade worker privacy by creating a statewide database requiring personal employee information. (The state currently has access to this information during on-site licensing reviews.)

The Coalition for Affordable & Quality Care is concerned with the closed process, particularly since no one from the Department of Human Services (DHS) and Department of Community Health (DCH) has admitted to writing the rules.

The Granholm Administration should just drop these rules since they are non-productive, unworkable and expensive. The results of this process will have a significant impact on the lives of our state's most vulnerable citizens.



## **Coalition for Affordable & Quality Care Concerned About Proposed Adult Foster Care and Home For The Aged Licensing Rules**

***Over-Regulation Will Divert Quality Care***

Proposed changes to Michigan's Adult Foster Care (AFC) licensing rules by the Granholm Administration will have a detrimental impact on the state's more than 50,000 elderly, developmentally disabled and mental health residents, according to the Coalition for Affordable & Quality Care. If implemented, the Coalition warns that the excessive regulatory changes threaten to divert direct services from AFC residents to redundant administrative responsibilities, drive up costs to consumers and prove invasive to worker privacy without adding any benefits for adults requiring foster care.

According to the Coalition for Affordable & Quality Care, the proposed rules changes neither benefit the most vulnerable members of our adult society nor do they reflect the input of key industry stakeholders, referring to an AFC advisory workgroup representing a broad range of consumer advocates as well as industry and regulatory representatives.

The Michigan Department of Human Services and Michigan Department of Community Health assembled the workgroup at the request of the Granholm Administration. Without explanation, Gov. Granholm dissolved the group on Oct. 13 – six months before the group was scheduled to present finalized recommendations – and instituted new rules that

- require every AFC home to establish health and safety commissions to do work that is already required by law;
- invade worker privacy by requiring information from providers and workers that has nothing to do with how care is provided, but hands over confidential information that can be used against employees;



- incur additional cost of regulatory compliance whereby smaller AFCs could not continue to operate, lessening the choices available to individuals who rely on these organizations; and
- favor as automatically compliant those AFCs with collective bargaining agreements between direct care employees and the licensee – when there are currently no other regulated professions or industries in Michigan that defer to union status or collective bargaining to measure compliance with administrative rules.

The Coalition for Affordable & Quality Care contend the primary responsibility of Michigan AFCs should be providing quality care to adult residents, not adding layer upon layer of administrative responsibilities and the inherent associated costs. In addition, the assisted living industry, together with the State, should be looking at ways to retain current and recruit future AFC employees, rather than creating substantial career disincentives.



## **Overview**

### **History**

The Michigan Department of Human Services and Michigan Department of Community Health was asked by the Granholm Administration to update rules that regulate how assisted living providers care for and ensure the safety for persons in licensed settings.

A process for reviewing existing rules and regulations and developing recommendations from a workgroup representing all facets of the assisted living community – including a broad range of industry and regulatory representatives – was developed. As the workgroup's function was strictly advisory, the Administration was not obligated to follow any of its recommendations.

The workgroup began meeting each Thursday beginning August 25, 2005 and were scheduled to work through April 2006. On October 13, six months before the workgroup's recommendations could be finalized, the Granholm Administration dismantled the workgroup without any prior warning or any subsequent explanation. Despite protests from workgroup members, the meetings were halted.

According to workgroup members, the workgroup was not given enough time to conduct a substantive review of the rules governing adult assisted care facilities. Members of the workgroup also expressed dissatisfaction that the workgroup process ignored other compelling public policy issues. Members also expressed fear that the recommendations that they did make would be ignored by the Administration.

### **Granholm Administration Proposed Rules and Consequences**

Cutting short the timeline for recommendations made by the group effectively advances a set of rules that negatively impacts the adult assisted living industry because the Granholm Administration rules do not reflect the true input of a broad base of industry stakeholders.

All adult assisted living organizations – large, small, urban, rural, corporate and family owned – would be required to comply with new rules that would do little to ensure the safety and compassionate care of those most vulnerable among us. For many adult foster care and assisted living homes, the additional cost of regulatory compliance would mean they simply could not continue to operate, which would lessen the choices available to individuals who rely on these organizations.

Briefly, the proposed rules have the additional negative impacts:



1. Invasion of worker privacy – would require information from providers and workers that have nothing to do with how care is provided, but hands over confidential information for potential misuse by the public.
2. Excessive regulation – requires every home, even the smallest, to establish health and safety committees to do work that already is required by law.
3. Diversion of work from consumers to administrative tasks. Money will have to come from direct care services and employee compensation, which will have to be cut to free up money for increased administrative costs.

The proposed MDCH and MDHS administrative rules relating to Adult Foster Care and Home for the Aged licensees should not be promulgated for the following reasons:

1. They give preferential treatment and “deeming” status to licensees with collective bargaining agreements and to licensees engaging in collective bargaining activities. No other regulated profession or industry in Michigan defers to union status or collective bargaining to measure compliance with administrative rules.
2. The rules impose burdensome and duplicative administrative reporting requirements that divert resources away from direct consumer services. Industry analysts predict that compliance with the proposed rules requiring the establishment of health and safety committees in each facility would add at least \$35 million each year to Michigan AFC and HFA employee costs.
3. To properly promulgate seven sets of revised administrative rules governing more than 5,000 human services organizations serving more than 40,000 Michigan citizens, the process should be thorough, methodical and inclusive. MDHS and MDCH have attempted to make vast changes to these rules in just two months time, despite strong opposition from the stakeholders.
4. Many of the proposed rules lack statutory authority and/or conflict with well-established state laws. For example:
  - a. The proposed rules require mandatory reporting of employees’ personal information including Social Security Numbers, addresses and date of birth. This is in direct conflict with the recently enacted identity theft protection laws.
  - b. The proposed rules deputize MDHS to enforce wage and hour related matters. Not only is there no statutory authority for this change, it compromises MDHS’s ability to focus on real consumer protection issues as opposed to monitoring employment practices.



## **Background**

More than a million Americans are living in an estimated 30,000 to 40,000 assisted living communities. In Michigan, more than 50,000 adults reside in assisted living facilities. Approximately 40,000 elderly adults reside in state regulated settings licensed as Adult Foster Care homes. Approximately 11,000 elderly adults reside in licensed Homes for the Aged.

Out-of-home and non-nursing home options include Adult Foster Care and a Home for the Aged.

**Adult Foster Care (AFC)** homes are residential settings that provide 24-hour personal care, protection and supervision for individuals who are developmentally disabled, mentally ill, physically handicapped or aged individuals who cannot live alone but who do not need continuous nursing care.

- AFC Homes are restricted to providing care to no more than 20 adults

**A Home for the Aged (HFA)** provides 24 hour room, board, and supervised personal care to:

- 21 or more unrelated, nontransient individuals 60 years of age or older.
- 20 or fewer individuals 60 years of age or older that is operated in conjunction with and as a distinct part of a licensed nursing home.

**Note:** HFA is restricted to providing care to persons who are 60 years of age or older

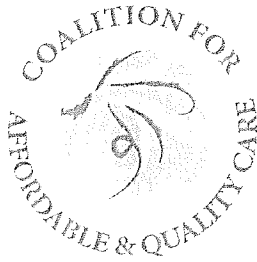
**Both AFC Homes and HFA provide care to persons who are or have:**

- Aged
- Mentally Ill
- Physically Disabled
- Alzheimer's Disease or other Dementia Related Disorders

Care may include assistance with bathing, grooming, dressing, eating, walking, toileting or the administration of medication.

## **Costs**

Costs range from \$30 to \$200 per day – generally less than the cost of home health services and nursing home care. Costs are managed generally from a family's own resources and insurance programs. Often persons with developmental and psychiatric disabilities receive public reimbursements from their respective community mental health agency, which receive funding from the Michigan Department of Community Health.



### **Assisted Living Backgrounder**

Assisted living offers many options from independent apartment living with access to common areas for dining and other activities to multi-occupancy settings with private or semi-private bedrooms and bathrooms with common areas for dining and socializing.

Michigan has nearly 50,000 adults residing in state licensed assisted living facilities. Licensed assisted living homes are divided into two categories: Adult Foster Care (AFC) and Homes for the Aged (HFA).

Assisted living is a special combination of housing and personal care services and supports. Licensed assisted living facilities provide for many resident needs, which may include personal care, supervision, protection, social activities, transportation, housekeeping, meal-preparation, assistance with medications, other activities of daily living as determined by the consumer's individual plan of service.

Supportive services are available 24 hours a day to meet scheduled and unscheduled needs in a way that promotes maximum dignity and independence for each resident, including

- meal preparation and accommodation for special diets
- health promotion and wellness programs
- medication management
- organized social and recreational activities
- transportation to doctors and other appointments

Assisted living facilities range from high-rise complexes to single family dwellings. They are located in both rural and urban areas.

It is estimated that thousands of elderly persons reside in unlicensed assisted living settings across the state. Licensure is not required because no single entity is providing room and board and 24 hour personal care, supervision and protection. Because there is no licensing process or central registry, it is difficult to track these settings and quantify their existence. These settings may use the term assisted living, independent living, retirement living or other marketing term. They typically offer housing with services. The services are usually not available 24 hours per day and are commonly provided by a home health care agency that is unrelated to the landlord.

### **Licensed Assisted Living in Michigan**

Approximately 34,000 adults reside in state-regulated settings as AFC homes, which provide 24-hour supports and services for persons ages 18 and older with developmental disabilities, psychiatric disabilities, or physical disabilities and cannot live alone but do



not need continuous nursing care. AFC homes are restricted to providing care for no more than 20 adults.

Approximately 14,000 elderly adults reside in licensed HFAs, which provide 24-hour support and services to 21 or more individuals ages 60 years and older and may have special services for persons with memory impairments.

Services in both AFC and HFA facilities may include assistance with bathing, grooming, dressing, eating, walking, toileting or the administration of medicine.

AFC and HFA costs per individual range from \$30 to \$200 per day, which generally is less than the cost of home-health services and nursing home care. In settings serving the elderly costs usually are managed from a family's own resources and insurance programs. In settings supporting persons with developmental disabilities and psychiatric disabilities the costs are reimbursed through a local community mental health system funded by MDCH.

AFCs are regulated under Act No. 218 of the Public Acts of 1979, as amended; and HFAs are regulated under Act No. 368 of the Public Acts of 1978, as amended.





## **Frequently Asked Questions**

### **How many people live in Adult Foster Care homes?**

More than a million Americans are living in an estimated 30,000 to 40,000 assisted living communities. In Michigan, more than 48,000 adults reside in assisted living facilities. Approximately 34,000 elderly adults reside in state licensed Adult Foster Care (AFC) homes. Approximately 14,000 elderly adults reside in licensed Homes for the Aged (HFA).

Homes for the Aged (HFA) serve only persons age 60 and older and Adult Foster Care (AFC) homes serve the elderly as well as persons with development disabilities, psychiatric disabilities, and physical disabilities.

### **Who Needs Foster Care?**

Out of home and non-nursing home options include Adult Foster Care and Home for the Aged.

*Adult Foster Care* (AFC) homes are residential settings that provide 24-hour personal care, protection, and supervision for individuals who are developmentally disabled, mentally ill, physically handicapped or aged who cannot live alone but who do not need continuous nursing care.

- AFC Homes are restricted to providing care to no more than 20 adults.

*A Home for the Aged* (HFA) provides 24-hour room, board, and supervised personal care to:

- 21 or more unrelated, non-transient individuals 60 years of age or older.
- 20 or fewer individuals 60 years of age or older that is operated in conjunction with and as a distinct part of a licensed nursing home.
- HFA is restricted to providing care to persons who are 60 years of age or older

### **Both AFC Homes and HFA provide care to persons who are or have:**

- Aged
- Mentally Ill
- Physically Disabled
- Alzheimer's Disease or other Dementia Related Disorders

Care may include assistance with bathing, grooming, dressing, eating, walking, toileting or the administration of medication.



**How much does Adult Foster Care cost?**

Costs range from \$30 to \$200 per day – generally less than the cost of home health services and nursing home care.

**Who pays for Adult Foster Care?**

Costs are managed generally from a family's own resources and insurance programs. People with developmental and psychiatric disabilities receive public reimbursements from their respective community mental health agency, which receive funding from the Michigan Department of Community Health.

**How did the proposed licensing rules come about?**

The Michigan Department of Human Services and Michigan Department of Community Health was asked by the Granholm Administration to update rules that regulate how assisted living provides care for and ensure the safety for persons in licensed settings.

A process was instituted in August 2005 for reviewing existing rules and regulations and developing recommendations from an Ad Hoc Rule Revision Workgroup. The Workgroup represented all facets of the assisted living community – including a broad range of industry and regulatory representatives. As the workgroup's function was strictly advisory, the Administration was not obligated to follow any of its recommendations.

**How much time was the Workgroup given?**

The Workgroup began meeting each Thursday beginning late August, and was scheduled to adjourn in April 2006.

**What happened to the Workgroup?**

On October 13 – six months before the Workgroup's recommendations could be finalized – the Granholm Administration dismantled it without any prior warning or any subsequent explanation.

**Why are the Workgroup members dissatisfied?**

According to its members, the Workgroup was not given enough time to conduct a substantive review of the rules governing adult assisted care facilities. Members also believe that there existed no compellingly logical reason for the abrupt dismantling of the Workgroup.

Cutting short the timeline for recommendations made by the group effectively advances a set of rules that negatively impacts the adult assisted living industry because the Granholm Administration rules do not reflect the input of a broad base key industry stakeholders.



### **What are the Granholm Administration's proposed rules?**

All licensed assisted living settings – large, small, urban, rural, corporate, and family owned – would be required to comply with new rules that would do little to ensure the safety and compassionate care of those most vulnerable among us. For many adult foster care and assisted living homes, the additional cost of regulatory compliance would mean they simply could not continue to operate, which would lessen the choices available to individuals who rely on these organizations.

### **Are there other negative consequences to the proposed changes?**

Briefly, the proposed rules have the additional negative impacts:

1. Invasion of worker privacy – would require information from providers and workers that have nothing to do with how care is provided, but hands over confidential information that could be misused by the public.
2. Excessive regulation – requires every home, even the smallest, to establish health and safety committees to do work that already is required by law.
3. Diversion of work from adult patients to administrative tasks. Money will have to come from direct care services, which will have to be cut to free up money for administrative costs.

### **What are the requirements of the proposed rule changes?**

The rules promoted by the Granholm Administration require:

1. Arduous and repetitive reporting requirements. Under the proposed reporting requirements, licensees have to submit annual and intermittent reports relating to staff turnover rates, staffing methods, monthly staffing ratios, changes in staffing ratios, annual staffing ratios, wage rates, employee benefits, reasons for terminating workers, reasons employees voluntarily quit and more. Many of these same issues are addressed already in the rules and are monitored at licensing renewal inspections (every two years). Staffing ratios, staffing patterns and employee records are reviewed at onsite inspections and should not be subject to annual reports.
2. Private information will be made public. Under the proposed rules, the licensee's private independent financial audits must be filed annually. Also under the proposed rules, employee social security numbers, employee disciplinary and termination information and many other types of traditionally private information are subject to reporting to the state and therefore also open to public inspection. This is overly intrusive for licensees and workers, and could significantly lower the number of

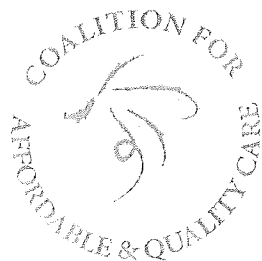


potential caregivers in a field that is currently short-staffed in an industry anticipating an exponential growth rate in adults requiring foster care.

3. **Loss of competitive position.** With the proposed public disclosure of employee wage and benefits structures, employers lose the competitive advantage in recruiting and retaining staff. Current proprietary and customized compensation and rewards systems will be potentially lost as public disclosure steers the job market towards an inflexible and uniform structure.
4. **Financial hardships.** The proposed licensing rules create substantial administrative expense. They entail extensive reporting, training and employee committee requirements that add tremendous administrative costs for licensees. The rules make no provision for funding these costs. Providers serving persons with private funding have received grossly inadequate funding for many years. Providers serving persons with private resources struggle with the ability to keep services affordable and competitive.
5. **Displacement of people.** If financial requirements change, many people potentially will be forced from current living arrangements.
6. **Deeming status for unionized workforce.** The proposed rules indicate that a licensee shall be deemed to be compliant with some of the proposed rule provisions if a collective bargaining agreement exists between the direct care employees and the licensee, or the licensee participates in multi-employer collective bargaining activities. No other regulated profession or industry in Michigan defers to union status or collective bargaining to measure compliance with administrative rules. Currently, less than 10 percent of adult care facilities in Michigan are unionized.
7. **Department of Human Services staff will receive authority to assess the adequacy and sufficiency of employee wages and benefits,** which unduly burdens licensing staff with additional regulatory responsibilities. Traditionally, this responsibility has been delegated to the United States Department of Labor and its Michigan counterpart.

**What are the projected costs of these rule changes?**

Industry analysts predict that compliance to the proposed rules requiring the establishment of health and safety committees in each facility would add at least \$35 million each year to Michigan AFC and HFA employee costs. Administrative responsibilities such as tracking and reporting data would add significantly to these additional costs.



**Who would absorb the additional costs?**

The Granholm Administration's proposed changes do not provide remuneration for additional costs. Foster homes would have to divert resources from consumer care in order to comply with the cumbersome administrative responsibilities. Some providers will be forced out of business. Those that will survive will have to pass on a portion of the additional costs to the consumer, reduce services and/or reduce direct care worker compensation.

**What do Michigan's current regulations require?**

Michigan's current stringent regulations require renewal every two years. Although the licensee's primary responsibility is to provide quality, dignified care for vulnerable adults.

**Statutory Authority -**

Regulation of Adult Foster Care homes---Act No. 218 of the Public Acts of 1979, as amended.

Regulation of Homes for the Aged---Act No. 368 of the Public Acts of 1978, as amended.

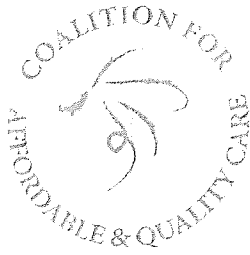


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## Issue Profile Analysis

### Overwhelming Issues

- The real issues are the preferential status given to facilities with collective bargaining agreements. Claims that open discussions over AFC rules were held for more than two years are disingenuous.
  - Over the course of two years, no open discussion was allowed between trade associations with AFSCME and the Governor regarding AFC licensing rules.
  - Furthermore, no discussion with other state agencies impacted by the proposed rules changes were held – a development unheard of in responsible drafting of rules.
  - Requiring meetings and published meeting minutes raises the legal concern that the purpose of the committees is more about organizing the workforce than about health and safety.
- The disbanding of the Ad Hoc Committee after less than two months reveal a disingenuous attempt to present an appearance that AFC trade associations were consulted on matters of import. Instead, committee members were essentially told that discussion would be held, but the Administration would proceed regardless the committee's recommendations.



## **Reporting Requirements**

- The Ad Hoc Rule Revision Workgroup proposed substantial changes to the originally proposed extensive reporting requirements. Even if you consider the Workgroup's modifications, the reporting requirements are still extensive.
- The proposed reporting requirements include public disclosure of
  - financial reporting,
  - wages,
  - benefit structures,
  - turnover rates,
  - staff social security numbers and employment records, and
  - recruitment and retention information.

Such employee personal information disclosure is unprecedented in other states, and, as proposed in Michigan, is perceived as a precursor to mandatory collective bargaining.

- The Ad Hoc Workgroup was repeatedly advised that its input was strictly advisory.
  - As of the last meeting of the Workgroup, no representations were made as to whether any of its recommendations would be adopted.
  - Workgroup members repeatedly expressed concerns that their work would be unreasonably dismissed.
- The Ad Hoc Committee concurs that workforce issues exist, but disagree that the proposed rules changes adequately address these issues. For example, there is no empirical link between the disclosure of wages and benefits to consumer quality. In addition, staffing health and safety issues are not the proper role of AFC licensing.
- Workgroup members made several recommendations that have been dismissed by MDCH and MDHS. Specifically, several Workgroup members sent a joint letter to the Governor, MDCH Director, MDHS Director and OCAL Director asking for
  - more time to review the rules;
  - permission to broaden the scope of the rule revision process to incorporate the Recommendations of the Long-Term Care Task Force; and
  - the appointment of an independent facilitator. All three of the requests were denied.
- Accordingly, the Workgroup has no reasonable expectation that its recommendations will be adopted.



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## **Statutory Authority**

- The licensing statutes have statutory authority to regulate a broad range of health and safety issues. The proposed changes, in effect, enact a Super Power Law, which usurps the authority of other agencies charged with industry oversight, including
  - Department of Community Health,
  - Michigan Department of Environmental Quality and
  - the Michigan Department of Labor and Economic Growth,
  - as well as other state and local public health offices.
- Other well-established state laws have clear jurisdiction that limit the scope of the state licensing statutes.
- Other laws and regulations vest the enforcement of health and safety standards with other state agencies.
- By way of illustration, the health and safety of employees is highly regulated by MIOSHA.
- Employee wages and benefits issues are governed by the Payment of Wages and Fringe Benefit Act, the Michigan Minimum Wage Law and other state and federal regulations relating to wage and hour issues.

But there is an obvious limit to this statutory authority. The proposed changes put such oversight under the authority of a body with no expertise in many areas. Furthermore, compliance with the proposed rules would be difficult, as the wording is non-specific and subject to arbitrary interpretations. The rules do not clarify how they are enforceable.

- The proposed rules require the examination of employer fringe benefits. There is no law mandating the provision of fringe benefits. To include the evaluation of the provision of fringe benefits as part of the regulatory process is therefore without statutory authority.





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## **Consumer Safety Issues**

- Many of the proposed rules are qualified with language that rationalizes that the purpose is to ensure or assure the protection, health and safety of residents.
- The original legislative intent of the Adult Foster Care Licensing Act was consumer protection.
- The proposed rules offer nothing that offers further protection of AFC residents.
- The rules erroneously presume that if there is any direct or indirect relationship with protection, health and safety, the statutory authority should not be called into question.
- The proposed rules ignore the legitimacy of other well-established statutes and regulations.
- All members of the Coalition are highly committed to manage risks to protect staff in order to keep costs down and ensure the safety and health of AFC residents and employees.
- The proposed rules changes require safety committees for each facility. In some instances, companies owning up to 17 different licensed facilities would be required to establish 17 different health and safety committees for each facility.



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## **Deputize MDHS**

- The proposed rules clearly require the state licensing agencies to examine employee wages and benefits when issuing a license, renewing a license, certifying a program and authorizing placement to a program.
- The proposed administrative rules specifically require a provider to demonstrate that it provides staff with “compensation and benefits sufficient to attract and retain a sufficient number of qualified direct care employees to provide for the protection, health, safety and welfare of residents of the home.”
- To measure compliance with this proposed standard, the licensing and placement agencies must not only look at employee wages and benefits but determine their relationship to the size and strength of the overall workforce, and the relationship to the provider’s ability to meet protection, health, safety and welfare standards.
- Employment practices relating to wage and hour issues are traditionally governed by the U.S. Department of Labor, its Michigan counterpart and collective bargaining agreements.
- The obvious intent of this proposed rule can be effectuated by crafting a rule relating to quality and outcomes. This can be accomplished without creating laborious methodologies to make value judgments about their relationship with wages and benefits.
- To say that the rules do not deputize MDHS to enforce or monitor wage and hour practices is not true.



## **Preferential Status**

- The proposed rules clearly give “preferential status” on certain rule requirements to licensees that engage in the collective bargaining process. The rules specifically state that licensees with a collective bargaining agreement with direct care employees shall be “deemed” in compliance with the rule relating to the provision of compensation and benefits. Similarly, employers engaging in multi-employer collective bargaining activities are also deemed in compliance.
- The proposed rules provide such licensees with “preferential status” by specifically deeming them to be in compliance with the above requirements. Simply put, licensees with collective bargaining agreements and licensees engaging in multi-employer collective bargaining activities need not demonstrate compliance. The matter of compensation and benefits rule becomes exempt from scrutiny.
- The rules make no reference to a rebuttable presumption on this issue.
- Although it is correct that concerns about staffing in group homes and in-home care have been debated for decades, the proposed rules do not enhance the plight of direct care staff.
- These rules do not provide any additional funding to licensees to enable them to provide higher compensation levels and better benefits to staff.
- The proposed rules are counterproductive by mandating numerous additional administrative requirements including extensive reporting requirements and the creation of committees. Increasing the administrative costs of licensees reduces the amount of funding available for direct consumer services and direct care staff wages and benefits.
- The proposed rules have definitely not been discussed in an open process for the past two years. The overwhelming majority of the stakeholders saw these proposed rules for the first time in July 2005.
- MDHS OCAL licensing staff and MDCH policy specialists were reportedly excluded from the process prior to July 2005.
- Stakeholders who were aware that the rule revision process may be underway were not given meaningful responses to inquiries about the process and subsequent requests to be kept informed and to participate were dismissed.



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- The attitude of organized labor in the development of these proposed rules has been “take it or leave it” when interacting with provider representatives. Certainly, organized labor has not approached provider representatives during the past two years in a spirit of cooperation to develop reasonable new licensing rules. This attitude is evidenced by the fact that organized labor continues to insist on most of the proposed rules despite their obvious administrative cost implications for licensees and failure to enhance services for persons with disabilities and persons who are elderly.



# NEWS CLIP

Questions? Call (517) 372-4400

## MIRS News

January 17, 2006

### House Passes Ergonomics Preemption Bill

Today, on a straight party-line vote, the House passed HB 5447, legislation to prevent the Gov. Jennifer **GRANHOLM** administration from promulgating ergonomics rules.

The bill, sponsored by Rep. Rick **JONES** (R-Grand Ledge), now moves on to the Senate, where Senate Majority Leader Ken **SIKKEMA** (R-Wyoming) has already spoken out strongly in its favor.

"Slaying the regulation dragon can not wait," said Sikkema Press Secretary Ari **ADLER**.

Presuming HB 5447 passes the Senate, Granholm would then have the choice of either allowing HB 5447 to become law, or to veto it. So, arguably, the real motivation behind passage of HB 5447 is to get Granholm on the record as either favoring or opposing a statewide ergonomics rule.

Apparently, Republicans feel Granholm would pay a political price (possibly with small business owners) for a veto. Most observers, however, still believe the governor will end up vetoing the bill.

Ironically, due to a court victory for former Gov. John **ENGLER** during his administration, once a department promulgates a rule, the Legislature can do little about it. But the reason the GOP-controlled Legislature now appears to be racing to pass HB 5447 is that it's one of the measures it chose to demonstrate that it's being pro-active from the very beginning of the year.

HB 5447 was reported out of the House Commerce Committee this morning and then moved immediately to the House floor. The vote in committee was also along straight party lines.

Proponents of the bill argue that the state adopting an ergonomics standard would give businesses one more reason to either leave Michigan or not to locate in Michigan to begin with.

In addition, they question whether such rules would actually do much if anything to

prevent injuries, which they argue are declining significantly as a result of voluntary steps being taken by companies.

This morning, Cynthia **PAUL** of the Service Employees International Union (SEIU), gave numerous examples of injuries employees suffer in the work place, and portrayed the overall issue as one for which supporting HB 5447 would be tantamount to opposing workers' safety.

But Commerce Committee Chair Bill **HUIZENGA** (R-Zeeland) annotated her comments.

"I appreciate your attempt to set up a straw man," Huizenga said. "But to vote yes on this does not mean that we don't care about workers' safety. This is about whether or not promulgating statewide rules is the best way to go about it."

Opponents of HB 5447 argue that the rules being considered are flexible and minimal. They are not much more than requiring businesses to educate employees and provide for means of reporting problems.

"It basically just says they (businesses) have to take some basic steps to make employees aware of risks," said Ken **FLETCHER**, legislative director for the AFL-CIO.

In addition to the natural tug-of-war between business groups and unions on this issue, the battle involves a turf war between the Legislature and the Department of Labor and Economic Growth (DLEG) and GOP frustration over Granholm's posture on the issue.

Administration officials are quick to point out that the Michigan Occupational Health and Safety Administration (MIOSHA) began drafting ergonomics regulations during the Engler administration. They also point out that the committee working on the rules is only advisory.

These responses have irritated ergonomic rules opponents. It says to them that Granholm is looking the other way while her own department puts together the new rules.

Business groups don't dispute that the process started under Engler, however, they claim that the movement toward adopting ergonomic rules had been basically going on "under the radar." They say that once business groups and Republican lawmakers began moving to prevent the ergonomic rules from fruition, the bureaucracy and the Granholm administration forged ahead with the process anyway.

Legislation to prevent the promulgation of ergonomic standards was included in boilerplate language for SB 0276, the DLEG budget. The language stated that no funds should be used to promulgate such ergonomics rules. When Granholm signed SB 0276 on Sept. 29 she included a letter in which she stated that the ergonomics language was unenforceable because it was an amendment by reference.

"Last year, the House passed legislation in the DLEG budget to deal with this on a 60-46 vote," Huizenga said today. "But the Governor basically vetoed it. I just had 78 jobs leave Zeeland. The ultimate question is 'Do you think this (an ergonomic standard) actually helps create jobs — obviously the business community doesn't think so.'"

In response Fletcher said yes, good ergonomic standards should be good for businesses.

"Injuries cost the state between \$15 to \$18 million in workers comp costs," Fletcher said. "Businesses have promulgated their own standards and it's saved them money. But we don't need (ergonomic rules) for the good actors, we need them for the bad actors."

Fletcher also said that most of the people on the ergonomics committee are from the business community.

"I've got the feeling that if they all stood up and said they don't want to do this it [wouldn't happen]." Fletcher said.

MIOSHA Director Doug **KALINOWSKI** read a quote from the California Chamber of Commerce that appeared to defend the California ergonomics standard. (California is the only state that has an ergonomics standard.) It said California's state standard is allowing employer flexibility and protecting against arbitrary enforcement.

He also asserted that MIOSHA had not tried to keep anything under the radar screen.

Amy **SHAW**, of the Michigan Manufacturers Association (MMA), testified that initially implementing the ergonomic standards would cost manufacturers in Michigan about \$10 million.

"And that's just the manufacturers," Shaw stressed.

She said that the statement by the California Chamber of Commerce read earlier sounded like it might have been used to fend off labor efforts to stiffen the current ergonomic standards.

In addition, Shaw argued that the California standards have not resulted in a significant drop in work place injuries.

Shaw and National Federation of Independent Business (NFIB) head Charlie **OWENS** had both been on the ergonomics committee, but resigned. In a written statement, Owens said he resigned when the committee moved ahead to try to draft rules without first debating whether or not rules were needed. Shaw said she resigned when the committee pushed ahead in spite of the language in the DLEG budget.



# NEWS CLIP

Questions? Call (517) 372-4400

## Gongwer News

January 17, 2006

### ERGONOMICS RULES, OR DOES IT? HOUSE DEBATES

Some call it a job killer and economic suicide, others call creating a statewide ergonomics rule a simple, common sense system the would help workers be safer at their jobs – but on Tuesday the House, in bipartisan fashion, passed legislation banning the Department of Labor and Economic Growth and by extension the Michigan Occupational Safety and Health Administration from promulgating such a rule – leaving the debate to continue, if only on the other side of the Capitol.

The bill (HB 5447) passed the House on a 56-45 vote and is sure to come up for a vote in the Senate in the near future since Republican leaders look to place the legislation on Governor Jennifer Granholm's desk by her State of the State address on January 25.

The bill was earlier reported to the full House by the Commerce Committee.

The Republican leadership has made passage of the ergonomics ban a key initiative as the Legislature jumps back into the thick of things. But Democrats argue that MIOSHA should be given time to review whether a rule is needed and if so, what kind of rule.

The argument has been through DLEG that the ergonomics advisory committee is in no way set to create a rule, but the co-chairs of the committee refuted that statement in committee earlier in the day, saying that they "fully understood" their purpose was to create a rule.

"I thought we were directed from the beginning to come up with a minimal rule," said co-chair Mark Spence, who works at Dow Chemical Company. His counterpart, co-chair Sheryl Ulin of the University of Michigan's Center for Ergonomics, testified to the same effect.

Mr. Spence said he is neutral on the legislation, while Ms. Ulin said she is opposed.

House Commerce Chair Rep. Bill Huizenga (R-Zeeland) said that while voluntary ergonomics systems have worked for some companies such as Dow, Ford and GM, a one-size-fits-all mandate simply would not work in Michigan.



He argues that companies that see savings, as Democrats say, have a right to install their own training and education mechanisms to cut back on worker's compensation claims (and that the state should encourage awareness of ergonomics in the workplace through education). But companies that have not followed their own program or the voluntary guidelines set under the federal government should not be forced into a rule that would be an extra cost with little or no payback, Mr. Huizenga said.

Business groups and Republicans opposed to the rule say that another state rule will do nothing but give companies another reason not to come to Michigan, citing examples such as Washington state, where voters struck down an ergonomics rule because it would have been bad for the economy, or in California, where a state mandated ergonomics rule did nothing but push businesses from the state.

But labor unions and Democrats argue that Washington voters were misled by business groups in the state, thereby not getting a chance to see the affect of a statewide rule, and California actually saw a \$1 investment in an ergonomics program come back in \$2 worth of savings in the long run. Companies that have initiated their own ergonomics rule are on the right track, these groups say, but the state should be more proactive to ensure the "bad actors" of business don't create an unsafe working environment.

"Consider the possibility that there might be a net savings (with an ergonomics rule)," said Rep. Andy Meisner (D-Ferndale), citing a company in Grand Rapids that implemented an ergonomics rule and saw \$900,000 savings.

Estimates from the National Federation of Independent Business show that an ergonomics rule could cost businesses \$500 million in the state, basically the amount of tax relief the Legislature and governor approved to manufacturers in 2005, the bill's sponsor, Rep. Rick Jones (R-Grand Ledge) said.

Having a board review an ergonomics rule, which it has done for more than a year, creates ambiguity for company executives, Mr. Jones said, adding, "We're not going to have this uncertainty."



# NEWS CLIP

Questions? Call (517) 372-4400

**The Associated Press**

**DAVID EGGERT / Associated Press**

February 14, 2006

## **Senate votes to block adult foster care rules favoring unions**

LANSING -- The state Senate on Tuesday voted to block the administration from setting rules that critics say would favor unionized adult foster care homes.

More than 50,000 Michigan residents live in adult foster care facilities and homes for the aged. The homes care for people over age 60 who can't live alone because of physical impairment or mental illness, but who don't need the level of care given in nursing homes.

Democratic Gov. Jennifer Granholm has responded to concerns about the quality of care for residents of the homes by asking the state to review administrative rules regulating assisted-living providers.

Rules drafted so far would consider a collective bargaining agreement to be evidence of compliance with certain requirements.

Republicans said the rules would create onerous "job-killing" regulations that most easily could be met by unionized facilities. All 22 Senate Republicans voted Tuesday to pass a law that bars rules that discriminate for or against facilities based on whether they have collective bargaining agreements.

The 15 Senate Democrats voted against it. They said the legislation to block new rules is premature and anti-worker. According to an analysis by the nonpartisan Senate Fiscal Agency, some assisted-care facilities won't recognize unions and have fired workers for engaging in union activities.

The measure now heads to the GOP-controlled House.

*The foster care home bills are Senate Bills 1026-30. The Detroit News*



# NEWS CLIP

Questions? Call (517) 372-4400

**The Detroit Free Press**

**By DAWSON BELL**  
**FREE PRESS STAFF WRITER**

*February 14, 2006*

## **State Senate votes on rule for adult foster care homes**

### **Regulation would have given preferences to union workforce**

The Michigan Senate voted 22-15 along party lines today to prohibit regulation of adult foster care that gives preferences to homes where the workforce is unionized.

The legislation came in response to concern among foster care home operators and patient advocates that Gov. Jennifer Granholm and the state Department of Human Services were preparing to issue new guidelines for homes that were tailored to the needs of organized labor instead of patients.

The draft rules assumed that homes with union workers meet some licensing requirements on staffing and patient care.

Significantly, it received less than the two-thirds majority needed to override a veto from Granholm should the legislation reach her desk.

More than 50,000 elderly and infirm adults live in licensed foster care facilities in Michigan, and a review of state regulation involving health and safety, staffing levels and employee compensation has been under way for a year.

Critics of that process said draft proposals released last fall could cost the industry \$35 million a year and lead to the closure of some facilities.

Department officials and Senate Democrats denied that claim and said legislative action was premature.

Sen. Gilda Jacobs, D-Huntington Woods, said Tuesday administration officials have agreed to consult more thoroughly with industry officials and patient advocates before issuing a formal proposal for new rules.

The Senate legislation adopted today is now headed for the state House.

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# NEWS CLIP

Questions? Call (517) 372-4400

The Associated Press

2/14/2006, 8:49 p.m. ET

By DAVID EGGERT  
The Associated Press

## **Senate votes to block adult foster care rules favoring unions**

LANSING, Mich. (AP) — The state Senate on Tuesday voted to block the Granholm administration from setting rules that critics say would favor unionized adult foster care homes.

About 50,000 Michigan residents live in adult foster care facilities and homes for the aged. The homes care for people over age 60 who can't live alone because of physical impairment or mental illness, but who don't need the level of care given in nursing homes.

Democratic Gov. Jennifer Granholm has responded to concerns about the quality of care for residents of the homes by asking the state to review administrative rules regulating assisted-living providers.

Rules drafted so far would consider a collective bargaining agreement to be evidence of compliance with certain requirements.

Republicans said the rules would create onerous "job-killing" regulations that most easily could be met by unionized facilities. All 22 Senate Republicans voted Tuesday to pass a law that bars the rules from discriminating for or against facilities based on whether they have collective bargaining agreements.

"Michigan families deserve safe, affordable care for their loved ones, and what the administration is considering doesn't achieve that," said Sen. Bill Hardiman, R-Kentwood.

The 15 Senate Democrats voted against the bills. They said the legislation is premature and anti-worker. According to an analysis by the nonpartisan Senate Fiscal Agency, some assisted-care facilities reportedly won't recognize unions and have fired workers for engaging in union activities. That statement is disputed by the Coalition for Affordable and Quality Care, which supports the Senate-approved legislation.

Sen. Irma Clark-Coleman, D-Detroit, said the state Department of Human Services knows there should be consensus while developing new rules.

"These bills are designed to restrict the executive branch even from considering certain reforms," she said.

The measure now heads to the GOP-controlled House.

The assisted-living industry supports the legislation, arguing that complying with new rules would cost an extra \$35 million a year.

The draft rules would require facilities to report wage information, benefits, turnover rates, employee retention data and Social Security numbers for each employee. The human services department or the state Department of Community Health could consider the factors when issuing a license.

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The foster care home bills are Senate Bills 1026-30.

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# NEWS CLIP

Questions? Call (517) 372-4400

## Gongwer News

Volume #45, Report #30, Article #05 --Tuesday, February 14, 2006

### SENATE PASSES BILLS BLOCKING UNION RULES

Legislation blocking the state from adopting administrative rules that Republicans said would favor unions in all long-term care facilities - and that one senator said would mean that older persons would be thrown in the street - passed the Senate Tuesday on straight party-line votes.

Democrats said it was premature for the Legislature to act on SB 1026, SB 1027, SB 1028, SB 1029 and SB 1030 since the rules in question are still in process, and since the state has agreed with nursing home and adult foster care centers to develop rules that are agreed to by all groups.

"These bills are premature at best, and anti-worker at best," said Sen. Irma Clark Coleman (D-Detroit).

But Sen. Nancy Cassis (R-Novi) said the system currently is working well and there is no reason to change it with the proposed administration rules.

Senate Majority Floor Leader Sen. Bev Hammerstrom (R-Temperance) said the proposed rules would imply that long-term care homes employing union workers automatically met certain safety standards.

And Sen. Alan Cropsey (R-DeWitt) said if the rules were not blocked then the cost of health care would be driven up, some homes would be forced to close and older persons would be forced out into the street.

"If we are going to stop senior citizens from being thrown out into the street we have to pass these bills," Mr. Cropsey said.

One issue surrounding the proposed rules is how quickly the administration may act on them. While administration officials said last week that the initial yearlong time period to study the rules had been truncated, they did not indicate the rules were imminent.

Mr. Cropsey said the legislation was the only real way the Legislature could block the rules because once they were submitted to the Joint Committee on Administrative Rules, lawmakers would be powerless to stop them. Senate Minority Floor Leader Sen. Mark Schauer (D-Battle Creek) disputed that assertion, saying the Legislature can block rules on at least a temporary basis.

In testimony last week, nursing and foster care home operators said the proposed rules would

force higher costs on them if their homes were not union-represented. But union officials said they have struggled for years to win negotiated agreements with homes where the workers had voted to have union representation.

Sen. Gilda Jacobs (D-Huntington Woods) unsuccessfully tried to amend the bills to stipulate that no state funding would go to homes that attempt to block labor organizing efforts. She said the amendment would put the state's requirements on the same footing as the National Labor Relations Act. But Sen. Bill Hardiman (R-Kentwood), sponsor of the main bill in the package, said he wanted to keep the package focused solely on health and safety issues.



# NEWS CLIP

Questions? Call (517) 372-4400

## MIRS News

February 14, 2006

### Dems Try To Tie One On For Unions

Senate Democrats tried to dress up legislation they perceive as anti-union by pushing a pro-union amendment to the bill. Sen. Gilda JACOBS (D-Huntington Woods) tried to get Republicans to tie-bar a bill designed to prohibit employers from discouraging its employees from joining a union to a package of bills that would prohibit the Department of Human Services (DHS) or the Department of Community Health (DCH) from creating administrative rules that waive certain state requirements for home care and adult foster care that collectively bargain with their employees.

"In the interest of fairness, I urge my colleagues to support this amendment," Jacobs said.

Republican after Republican spoke out against the amendment.

"This amendment is not part of the package," said Sen. Bill HARDIMAN (R-Kentwood). "We want to keep the package pure."

By "pure," Hardiman meant passing legislation that doesn't favor one group over another, but serves to protect vulnerable citizens and their families, which he believes the legislation will aim to do as the rules move forward (See "Union Opposes Senate Bills," 2/7/06).

"This is premature at best and anti-union at worst," said Sen. Irma CLARK-COLEMAN (D-Detroit).

Clark-Coleman said there is no reason for the Legislature to pre-emptively make laws about how the rules can be made up because the rules aren't anywhere near being finished.

Sen. Alan CROPSEY (R-DeWitt) said this is the perfect time to address the rules because once the rules are proposed, the Legislature really has no control over what they are.

Sen. Mark SCHAUER (D-Battle Creek) stood up to correct Cropsey, stating that the Legislature did have the power to tweak the rules because they had to get approved by the Joint Committee on Administrative Rules before they go into effect.

To clear up the confusion between the two Senators, Sen. Mike BISHOP (R-Rochester), who is chair of the Administrative Rules Committee, stood up and said yes, the committee could look at the rules but in order to make any changes, it would have to create bills and get them approved by both houses.

"But then they have to go to the governor," Bishop said. He followed by saying that might not be



the "best idea."

Jacobs' amendment didn't pass though Democrats, who voted against the amendment by securing a roll call vote.

"This implies that collective bargaining is synonymous with quality care," Hardiman said about giving preferential treatment to unions.

The entire package passed on party lines with Republicans voting in favor of the bills and Democrats voting against the bills.

SB 1026, SB 1027, SB 1028, SB 1029 and SB 1030 will go to the House.

In other action today, the Senate also passed a three-bill package that would make it easier for prosecutors to prosecute people involved in domestic violence cases. These bills passed unanimously.



# NEWS CLIP

Questions? Call (517) 372-4400

The Macomb Daily

February 15, 2006

By Chad Selweski Macomb Daily Staff Writer

## **Senate votes to block union preferences in assisted living**

### **Move blocks administrative rules not yet released by Granholm.**

The state Senate voted Tuesday to block potential new regulations for assisted-living centers that could give unionized adult foster care facilities an advantage.

The action comes after weeks of lobbying by the assisted-living industry to stymie rules that critics say could impose up to \$35 million in additional paperwork and administrative costs. Some small facilities say their financial ability to survive is in question.

Supporters of the upcoming rules counter that low wages and minimal fringe benefits for workers lead to an extraordinarily high job turnover rate, which hurts quality of care in senior housing centers. The 22-15 Senate vote, cast along party lines with Republicans in favor and Democrats opposed, would block administrative rules that say unionized facilities automatically meet standards for wages and benefits.

At issue are the 50,000 Michigan residents who live in adult foster care facilities such as assisted-living centers, group homes and homes for the aged. The homes care for people over age 60 who can't live alone because of physical impairment or mental illness but who don't need the level of care given in nursing homes. Funding for the impaired is largely supplied by the state.

Labor unions and advocates for the elderly have pushed for new standards that would link high job turnover to quality of care. The annual job turnover rate is more than 60 percent across the industry, meaning a majority of workers leave their jobs over the period of one year and most care-givers are inexperienced.

The industry pays entry-level wages of \$8 to \$9 an hour and facility owners concede that they compete with retail stores and fast-food restaurants for workers.

Kathleen Murphy, general counsel for the Michigan Assisted Living Association, was pleased with Tuesday's Senate vote. The bills now go to the state House for consideration.

"It's significant because the legislation is an attempt to indicate our licensing rules should be focused on consumer protection and not on employee relations or unionization," Murphy said.

The controversy is unusual because it spawned a pre-emptive strike in the Senate and had

sparked a breakdown of the typical rule-making process in which a work group, consisting of state regulators and industry representatives, reaches a consensus. Indications are that the process may be back on track, avoiding a political showdown.

Sen. Michael Switalski, a Roseville Democrat who opposed the legislation, said he was dismayed that the Senate would intervene while the rules are still evolving within the Granholm administration.

"You're taking up something that was never going to happen," he said. "The parties involved are supposed to come up with recommendations everybody can agree on."

But Sen. Alan Sanborn, a Richmond Township Republican who backed the bills, said the link between wages and quality of care should be broken.

"What the (union lobbyists) fail to understand is that some people care for our elderly for reasons of the heart and not for reasons of the pocketbook," he said.



# NEWS CLIP

Questions? Call (517) 372-4400

The Grand Rapids Press

February 09, 2006

## Foster care rules: Keep politics out

Michigan may or may not need any new rules governing adult foster care services, but there definitely is no call for regulations clearly discriminating against non-union homes.

That blatant bias has shown up in drafts of rules drawn up by the Granholm administration's Department of Human Services. Now a series of bills in the Senate, backed largely by Grand Rapids-area lawmakers, aims to forbid any such tilt. This is apparently necessary legislation. The government, very simply, should be neither assisting union organizing efforts or obstructing them. Beyond that, the union forces that are backing the labor preferences should know that the tactic could backfire on them when a less labor-friendly administration inevitably rewrites the rules.

The administration has had the rules in draft form for months, long enough for them to attract the strong opposition of adult foster care and assisted living organizations, representing some 5,000 such homes in the state. Hope Network in Grand Rapids, for one, has said the regulations would generate paperwork, create new bureaucracy and "drive up costs unnecessarily with no recognizable benefits for residents."

Pushing for the changes has been the American Federation of State, County and Municipal Employees, the union that wants to organize the largely non-union industry. Drawing homes into the union fold would be assisted by rules that make license renewals easier for homes that are unionized than for those that are not.

The draft rules would impose elaborate new administrative, employee wage-and-benefit and staffing requirements, making homes' license renewals dependent upon compliance -- but with an automatic assumption that homes covered by collective bargaining agreements already are in compliance. They thus would be outside state scrutiny.

Both the House and Senate have inquired into this issue. The Senate is farthest along, with five bills emerging this week from the Families and Human Services Committee, chaired by Sen. Bill Hardiman, R-Kentwood. The bills, whose co-sponsors include Sens. Ken Sikkema, R-Wyoming, and Alan Cropsey, R-DeWitt, would bar union preferences from statutes covering foster care and assisted living group homes. Language in each bill says that "a rule promulgated under this act shall not discriminate in favor of or against any provider . . . based on the presence of, or lack of, a collective bargaining agreement with employees."

This is basic collective-bargaining equity, ensuring that the state holds to a neutral stance

regarding union organizing.

The position of AFSCME and Department of Human Services has been that no rules are in place and so no legislative action is appropriate. But also true is that once the rules are officially embedded in the state's regulatory framework, amending them -- if possible at all -- would be time consuming and complicated.

The legislation ought to go forward, though its chances of being signed by Gov. Jennifer Granholm likely are doubtful at best. The governor's wisest option would be to head off any collision with lawmakers and the care industry, making sure that any new rules covering adult care contain no preferences for labor and do not impose unnecessary costs and intrusions on the foster homes and their employees. This shouldn't be a political issue. It's about state government's duty to be reasonable, restrained and evenhanded. Slanted, onerous labor relations rules don't qualify.

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# NEWS CLIP

Questions? Call (517) 372-4400

Booth Newspapers

February 08, 2006

By Sharon Emery

Column: State scrambling to build direct-care work force

If you're a baby boomer, you may already have endured the maelstrom involved in finding care for an ailing parent. You know that direct-care workers who meet your standards are often hard to come by.

Gov. Jennifer Granholm's Medicaid Long-Term Care Task Force highlighted the problem last spring in its final report. Recommendation No. 8: Build and sustain a competent, highly valued, competitively compensated and knowledgeable long-term care work force.

Indications are that making that happen won't be easy.

The administration's proposed update of licensing rules governing 5,000 adult foster care (AFC) and homes for the aged (HFA) facilities is under attack for what assisted-living providers call a pro-union agenda focused on administration rather than care. They've formed the Coalition for Affordable & Quality Care to fight the plan and have been lobbying opinion-makers across the state.

The facilities care for some 48,000 older and disabled Michigan residents, most in homes with 20 or fewer residents.

The proposed rules require licensed facilities to have a health and safety committee to review concerns at the facility and require homes to regularly report employee Social Security numbers, staffing ratios and wage and benefit levels to a statewide information clearinghouse.

Opponents say the rules invade worker privacy and essentially give the state authority to set pay and benefit levels. And in what providers consider an insulting blow, homes with union contracts are exempt from the reporting requirements.

Republican lawmakers are bristling that the Democratic Granholm administration is using the rules to enact policy the Legislature would never approve. Bills that would negate the proposed rules were passed out of the Senate Family and Human Services Committee Tuesday. Chairman Bill Hardiman, R-Kentwood, noted that it's "not the government's place to favor or punish" licensees on the basis of collective bargaining agreements.

Jim Gale from the Department of Human Services reassured the packed committee room that the state was "still in the early stages of rule making," and that it was reconvening a work group to try to reach consensus.

Union representatives, whom DHS says joined patient advocates, workers and providers in the work group last summer, say the reporting rules are meant to provide a worker wage structure and a registry to connect workers and employers. They insist the rules will help build the work force and so oppose the Senate legislation.

A 2003 study by Hollis Turnham and Steven Dawson for the nonprofit Paraprofessional Healthcare Institute, which advocates for workers, found that direct-care jobs in Michigan are not competitive with other entry-level jobs in terms of wages, benefits and working conditions. The work is so physically and emotionally challenging that chronic job vacancies and high turnover result.

"The state's average wage for all direct-care workers, \$9.27 an hour, qualifies a full-time worker with two children to receive food stamps," the study found, "... (and many) are not offered or cannot afford offered health care coverage; ironically, these workers provide health care services that they and their children cannot expect to receive."

Whether that's the state's problem is at the center of the debate.

Rule opponents say the local marketplace requires that providers pay their workers appropriately and offer competent care; otherwise, they fail.

Unions argue that low wages and high turnover mean the quality of care suffers and that the state has a responsibility to remedy the situation.

How the current uproar is resolved will signal how Michigan plans to build that competent, compassionate work force that we all may end up needing.



# NEWS CLIP

Questions? Call (517) 372-4400



February 07, 2006

## Group-home rules: Why this meddling?

Michigan's Department of Human Services is proposing new administrative rules for an industry that cares for 50,000-plus state residents. But are the proposed rules intended to help patients - or unionize 5,000 adult foster care and home-for-the-aged facilities?

Opposition to the rules' change has been mounting since last summer, when the rules were first proposed. Last week the political fat hit the fire when Senate Republicans introduced legislation to stop the Granholm administration from imposing the rules. That set up a clear test of legislative and executive authority. Ordinarily, the executive branch comes up with the rules to implement laws enacted by the Legislature; in this case, some lawmakers have concluded it's time to temper the governor's executive authority.

Under the legislation, lawmakers would bar practices that grant preferences to health occupations with collective bargaining. Here are two examples of these too-zealous rules:

Under the proposed rules, "A home shall provide its direct-care employees with compensation and benefits necessary to attract and retain a sufficient number of qualified direct-care employees to provide for the protection, health, safety and welfare of residents."

How will the state measure compliance with this nebulous wage-benefit requirement?

Here's the offending language: "A collective bargaining agreement with direct-care employees of the home resulting from participation of the home in multi-employer collective-bargaining activities ... shall be deemed by the department as sufficient evidence that the home is in compliance with this subrule."

Yes, this says in effect that the home has met this standard if it is a unionized workplace. If not, presumably the issue is arguable along the lines of what is "necessary to attract and retain sufficient" employees.

The proposed rules also would permit the state to establish a direct-care staff registry of individuals eligible to work in group homes and homes for the aged. This registry would include name, address, phone number and Social Security numbers, age, date of birth and employment record -- including reasons for leaving.

The information is pertinent for employers -- but it strikes us as over-reaching for the state's needs. Unless, that is, the intent is to allow unions access to the information for purposes of



organizing. Since operators of the homes say the information would be public information, available with a Freedom of Information Act request, that is a valid concern.

Granholm administration officials, when asked about these concerns, respond that the rules are merely proposed. Yet the process seems to be leading inevitably to affirmation.

That concerns us for the reasons cited above. But beyond that is the financial impact this could have on the state business climate as a whole, plus the impact on one small Home for the Aged that is of special concern to us -- the John George Home. Clearly that operation cannot bear extra burdens of state regulation at this point. And our sense is that many small adult foster-care homes are in the same boat.

Common sense dictates that, when you're in a hole and can't get out, you don't dig the hole deeper. Michigan is in an economic hole. This sort of rules-making, detached from economic reality, is just what the state doesn't need, for it would add expense to an entire industry.

Preferably, the state should moderate its intrusive rules and focus instead on rules that would actually improve life for the home residents.

Failing that, the Senate legislation deserves favorable consideration.



# NEWS CLIP

Questions? Call (517) 372-4400

## EDITORIAL

Oakland Press

February 7, 2006

Gov. Jennifer Granholm seems to be much more interested these days in securing her political base than in limiting burdens on Michigan employers.

Last week, she vetoed a bill that would cut business taxes and another that would stop the state from requiring new workplace ergonomic standards.

The ergonomic rules have to do with efforts "to adapt work or working conditions to suit the worker" to avoid unnecessary stresses and strains. The tax bill would have reduced taxes by \$24 million annually for some 35,000 small businesses.

Just a couple of months ago, the governor signed a \$600 million business tax reduction. Why then and not now?

Perhaps for the same reason she recently agreed to a plan that would make it hard for adult foster care homes and living facilities for the aged to avoid unionization.

Granholm's a Democrat. Labor unions almost always can be counted on to support Democrats, but that support can be lukewarm or red hot. And winning re-election this year could be difficult.

Her intent to impose state administrative rules making it easy for unions to gain representation surely will be rewarded. Her veto in defense of the pending ergonomic issue, another labor interest, should do the same.

The veto of the tax cut for small businesses, on the other hand, deprives them of a significant reduction in expenses. While \$24 million is not a lot for state government to make up, a 50 percent reduction in a business tax would mean a lot for the thousands of employers.

It would have helped those whose annual sales are \$10 million or less. And the tax in question is a version of Michigan's single business tax, which basically is a tax on existing even when a business is losing money.

The smaller the business, the more apt it is to be struggling. So the difference between paying 1 percent instead of 2 percent on what amounts to a simplified SBT can make a real difference.

To reject that reduction passed by the Legislature also is to overlook the likelihood that it would give the businesses the breathing room to expand and ultimately generate more dollars at the lower rate.

That happens repeatedly in the government-business relationship. If you tax something, you get

less of it and vice versa.

While Granholm's veto of that reduction will provide no relief from real pain for 35,000 businesses, it presumably will bolster her tough-on-business credentials among true-blue Democratic voters, the ones she'll need at the polls in November.

Assuming, however, that the state's aim still is as it always has been < to encourage job creation then Granholm is sending unfriendly signals.

She is attempting to practically foist unionization on adult care facilities, would deny a huge number of enterprises a meaningful tax reduction and would protect the prospect of additional significant, but not necessarily productive, workplace investment.

If one looks at what's happening in other states, it's obvious that lower business costs and more jobs go together. And Michigan is a national leader only in unemployment. Why would Granholm's classic partisanship encourage anything else?

THE OAKLAND PRESS

## *The Oakland Press*

Feb 1, 2006

### **Granholt's new long-term care rules are gift to union**

#### **EDITORIAL**

Let's call this what it is: A labor union getting a huge and cynical seeming favor from a governor who's rightly worried about winning re-election.

Gov. Jennifer Granholm has short-circuited her own Long-Term Care Task Force in an abrupt attempt to make it virtually mandatory for group homes and assisted living centers to be organized by the American Federation of State, County and Municipal Employees, better known as AFSCME.

Union representation is presented as the easiest way to meet proposed new standards.

Her administration is pushing through a set of operating rules that organized labor helped draft. The new internal paperwork required and employee time spent in mandatory meetings would cost an estimated \$35 million a year, the care industry in Michigan claims. That likely would mean higher fees when most families have to struggle to afford such care now.

The stated aim of this virtual state sponsored labor-organizing effort is to ensure that the employees at such facilities are better trained and compensated, which presumably would attract a more reliable work force and reduce turnover.

Those now in the business of providing such care also complain that the new rules are being rushed into place with too little consultation.

A procedural change engineered by former Gov. John Engler is coming back to haunt foes of the new rules. For his convenience and that of his successors, he took the lawmakers largely out of the approval or denial process. So basically what Granholm and AFSCME want, they can get. That is unless citizen protests were to lead the governor to conclude the ploy might do her more harm than good at the polls.

One organization shut out of the long-term study process by this sudden rush to



# NEWS CLIP

organize is AARP in Michigan. It's an organization big enough to get any politician's attention if it wants to.

Perhaps the most shameful aspect of this seemingly panicked maneuver by the governor is that it so disappoints and disillusiones the many well-meaning participants in her original task force. Among its goals was to make it possible for more of those now in assisted living centers to return to their own homes, an effort applauded in this space.

Now that's been kicked down the road for who knows how long in order to do an apparent election-eve favor for a powerful labor union.

# Group home wage meddling sends a job-killing message

*Proposed rules favor unions, violate worker privacy*

**M**ichigan is preparing to raise the cost of doing business here, repelling outside companies and perhaps killing existing ones in the process.

The state would do so through proposed changes in state licensing rules for adult group homes and assisted living centers for seniors and the disabled. A coalition of four industry associations estimates the changes dealing with wages, benefits and employee information would cost \$35 million a year in additional administrative costs.

"These rules will require additional costs that can't be passed along to the consumer," says Kathleen Murphy, general counsel for the Michigan Assisted Living Association.

The coalition also argues the wage rules favor unionized facilities over nonunion ones. A spokeswoman for Department of Human Services says the rules don't play favorites. A public hearing still will be held to review the recommended rules.

Health care unions for years have contended that higher wages lead to better staff and better care for patients. And the proposal would have the Department of Human Services review the pay and benefits of facilities to determine whether they are sufficient to attract and retain employees.

But higher wages don't necessarily lead to better care. Care facilities and customers are better able to set wages in the marketplace, not the state.

The state would also require homes to have committees on safety, staffing and benefits at each site they run, which would be expensive to staff and house.

The proposals seem to be an organizing tool for unions such as the American Federation of State, County and Municipal Employees.

The state would expose the privacy of workers by requiring providers to report employee information, including Social Security numbers, home addresses, phone numbers and reasons for leaving their employment. This would make it easier for unions to get information on workers they are trying to organize. It also would leave workers vulnerable to identity theft and discourage them from working with the disabled and elderly.

The Department of Human Services contends that the worker data base will make it easier for the state to spot trends and better oversee the facilities.

Group home and assisted living center representatives say workers are better served by letting state regulators review employee records on site every two years, as it does now.

The last thing Michigan needs is another unfunded state mandate that adds to its anti-business climate. If Gov. Jennifer Granholm really wants to help businesses, workers, seniors and the disabled, she will kill these rules before they devastate the state.



# NEWS CLIP

Questions? Call (517) 372-4400

**The Detroit News**

**January 18, 2006**

## **State burdens group homes with more rules**

### **Proposal adds massive costs**

As a nonprofit organization representing 1,500 adult foster care and home for the aged licensees throughout Michigan, we support the Dec. 31 editorial, "Group home wage meddling sends a job-killing message." We are not convinced that the new licensing rules proposed by the Michigan Department of Human Services would accomplish either of these purposes.

The proposed rules would impose massive new administrative responsibilities upon licensees that would divert resources away from direct consumer supports and services for more than 50,000 vulnerable adults. The rules also invade employee privacy, which makes employment in the assisted living field unattractive to many caring individuals. These proposed rules should not be promulgated.

*Robert L. Stein*

### **Rule changes help vulnerable**

As an ombudsman for Citizens for Better Care and the mother of a 46-year-old developmentally disabled son who resides in a group home, I believe The News is too caught up in its disfavor of anything "union."

The vulnerable residents of adult group homes and assisted living centers need the protection from unscrupulous and dangerous employees who are not presently screened, certainly the good, compassionate employees who have not been paid fairly and often have no benefits whatsoever for their very difficult jobs, surely deserve what the proposed changes would accomplish: encouragement to stay on their jobs.

*Doris Austerberry*

### **Rules don't help residents**

Kudos to The Detroit News for its Dec. 31 editorial urging the governor to halt the proposed licensing rule changes for adult foster care homes. As a parent of a young man with developmental disabilities served by a top-notch provider, what is most important to me is superb care and the warm, gentle relationship between my son and those caring for him. What I do not want is for my son's caregivers to be diverted by even more rules and reporting than the volumes they already shoulder.

This field is already one of the most heavily regulated, and the proposed rules have virtually no care-related purpose. In fact, my son's provider has estimated that these rules could cost the organization nearly \$50,000 annually, money far better spent on enhancing the lives of the people it serves.

*Carol Kaczander*

**Rules favor unions**

If approved as written, recently proposed rules for adult foster homes in Michigan will likely force some 36,000 residents (which include elderly, physically handicapped and mentally handicapped individuals) out of their homes. Numerous rules were added that favor homes that have a collective bargaining agreement in place. Much of the added regulation would require each home to create staff committees and additional burdensome record keeping and annual reporting, including employee wage and benefit references.

The higher wages and benefits for direct care workers will either be passed on to the adult foster care home residents or force these small group homes out of business.

*Mr. Sandy D. Mabery*

**Don't kill existing homes**

The rule changes would add millions of dollars of cost to the delivery of senior care services in Michigan through the creation of redundant and unnecessary paperwork. They would shift the focus of providers from the provision of care services to compliance with paperwork regulations. They would expose staff to the invasion of privacy and identity theft. And they would drive operators out of business.

If Gov. Jennifer Granholm is serious about creating a positive business environment in Michigan, she needs to defeat the proposed rules.

*Paul VerLee*

**Beware state involvement**

As a former member of the staff working with assisted living facilities, I agree with the editorial and believe we need to make sure that these "staffing" rules do not get changed.

There are a great many concerns that I would have if the state became involved with the facilities in this manner.

*R. Guilford*

*General Counsel Michigan Assisted Living Association Livonia Farmington Hills Oak Park  
Owner Pine Tree Place, Assisted Living Clarkston Pine Meadows Assisted Living Armada  
Westland*





# NEWS CLIP

Questions? Call (517) 372-4400

The Macomb Daily

January 27, 2006

By Chad Selweski Macomb Daily Staff Writer

## **Assisted living centers may face closings**

### **State regulations leave owners faced with price hikes.**

A coalition of assisted-living centers claims prices may rise and some small facilities may close if proposals to tighten Michigan regulations are enacted.

The Coalition for Affordable & Quality Health Care is sounding the alarm about potential changes in state licensing rules for assisted-living centers for the elderly and disabled and adult group homes for the developmentally disabled. The coalition asserts that the requirements could cost their industry \$35 million a year.

"I don't have any problem with meaningful regulations designed to protect the vulnerable elderly. But ... I don't see anything in these rules that protect the residents," said Paul Ver Lee, who owns the Fair Acres-Pine Meadows assisted-living center in Armada.

But state officials say the coalition's concerns are premature. Any attempt to revise the rules is still many months away and subject to numerous revisions. The approval process includes several layers of approval and will feature public hearings for input, said Maureen Sorbet, a spokeswoman for the state Department of Human Services.

"We are so early in this process and it's a very long and deliberative and prescribed process," Sorbet said.

The rule changes, initiated by the DHS' Office of Children and Adult Licensing, are intended to improve the quality of care and strengthen the licensing process. According to the opposition coalition, the most current draft of the rules would require committees at each facility to address issues such as staffing, health and safety. Mandated paperwork would document employee wage and benefit levels, personal data about each worker, reasons for employee terminations, and staffing ratios. The coalition believes the additional administrative workload would be unnecessary and would take away from "front line care" of the industry's 50,000 clients.

"We already have all kinds of committees," said Lawrence Maniaci, executive director of Fraser-based Homes of Opportunity Inc., which operates 10 group homes. "My employees have a lot of concerns about this, about the privacy issues this brings up."

Perhaps the overriding issue is high employee turnover rates, which both sides agree detracts from quality care. The coalition says that employee turnover is 50 percent, meaning the

typical facility loses half of its work force each year. Critics say the rate is at least 60 percent — and above 100 percent at some centers.

Workers are typically paid a starting wage of \$8 to \$9 an hour and they don't initially receive health care benefits. An assisted-living worker must have a high school diploma, and new hires receive three weeks of training.

Owners of assisted-living centers concede that they compete with fastfood restaurants and retail stores for workers. The employee situation prompts officials to cite links between wages, turnover and quality of care.

"The people who take care of our parents, grandparents and disabled children make less than some people at MacDonald's and Burger King," said Nick Ciaramitaro, legislative director for the American Federation of State, County and Municipal Employees Council 25, which represents about 5,000 group home workers in Michigan. "Many of these people qualify for food stamps or Medicaid."

Ciaramitaro denies that the potential rules would give unionized centers a competitive advantage. He said wage-benefit rules could improve employee retention rates, which would cultivate the kind of personal bond between clients and caregivers that's necessary for the "intimate care" of assisted living.

The volatility in the work force is a growing issue because one estimate indicates that the number of employees needed in assisted-living centers and nursing homes will double over the next 10 years.



# NEWS CLIP

Questions? Call (517) 372-4400

Midland Daily News

12/28/2005

Cheryl Wade, Midland Daily News

## **New rules could threaten small adult foster homes**

Organizations that represent adult foster care homes and homes for the aged say proposed state rules now under draft could put some Mom and Pop homes out of business.

The coalition, made up of organizations that represent care providers or own homes, has been making the rounds of media outlets, saying the rules allow homes with unionized staffs to meet some state quality standards merely by having unions. Instead, the state should put more emphasis on outcomes and consumer satisfaction, they say. But a union official says having collective bargaining is one way to ensure workers at such homes are adequately paid and work in safe conditions.

"We haven't seen a standard like this in the history of our regulations," or for more than 30 years, said Kathleen Murphy, general counsel of the Michigan Assisted Living Association, a statewide trade group. She said at least 90 percent of staff working in licensed homes are not affiliated with a union.

"It's a highly independent workforce," she said. "I think it's working well the way it is."

But Nick Ciaramitaro, director of legislation and public policy for the American Federation of State, County and Municipal Employees, said there's a serious problem in this industry with workers who don't have adequate pay and benefits. That has meant much staff turnover.

"We in ... society pay people more money for flipping French fries than for taking care of our parents, grandparents or children," he said "Over 50 percent of the people working in the industry tend to work at least two jobs, often three, amounting to 40 to 60 hours (a week)" and half of workers are eligible for Medicaid, food stamps or both.

Ciaramitaro said the rules should require that for a home to be licensed or certified and to accept residents, it should demonstrate the ability to attract and retain "sufficient and trained staff." Having a collective bargaining agreement should be evidence that employees are paid sufficiently, he said.

Gail Ronquist, who owns an AFC home in Williams Township and one in the Upper Peninsula, said she doesn't believe she needs a union to ensure decent working conditions. She pays \$7 an hour or a salary of \$1,200 a month for a job she called "glorified baby-sitting" because her residents can take basic care of themselves or else Ronquist calls in a hospice caregiver. Mothers who work at her homes may take their children to work.

The coalition has other problems with the proposed rules. Homes would be required to have health and safety and safe staff committees that would meet regularly and have minutes and accompanying paperwork. Murphy said the committees are arduous and don't allow for flexibility.

Another proposed change would affect the way homes track data, said Deborah Pettyplace of Central State Community Services, which operates group homes. Homes keep a set of data that includes such information as incident reports. The state visits the home and inspects the data. But the new draft would have homes put the data into a computer database linked to the state, and she believes the extra work would be burdensome or even ridiculous.

With only so much money to go around, "how do you increase staff to do the administrative work?" asked Linda Lawther of the Michigan Center for Assisted Living, another statewide trade group.

Sara Kindy, who operates a local 10-person licensed AFC home, said she knows little about the rules but said operators like herself have enough paperwork to do as it is.

"If a home can't afford a computer, the state shouldn't enforce it," she said. Ronquist said she believes requiring reports to be on a database interferes with residents' privacy.



# NEWS CLIP

Questions? Call (517) 372-4400

The Lansing State Journal

December 21, 2005

## **State Sen. Alan Cropsey: Rules threaten care for seniors**

As a state lawmaker, I am honored to be part of a system that draws upon a wide array of opinions, beliefs and knowledge to create sound public policy. I believe in broad dialogue to achieve a result that reflects a general consensus in most cases.

Disturbingly, an attempt is being made to pass through with very little opportunity for public input a series of all-encompassing rules governing the assisted living community, leaving Michigan's most vulnerable residents at risk and diminishing the number of quality choices available for them and their families.

When I chaired the Joint Committee on Administrative Rules in the 1990s, we made sure that people affected by the rules had a say in what was being developed.

Today, I'm concerned with the way the administration is promulgating rules for 50,000 of our most vulnerable citizens. At a Nov. 30 public hearing, families and providers from across the state testified that, if implemented, these proposed rules impose unnecessary and costly reporting requirements; divert resources from direct services; require personal information of employees to be subject to public disclosure; and inappropriately come close to demanding unionization of employees.

This proposed change is extremely unique. No other regulated profession or industry in Michigan defers to union status or collective bargaining to measure compliance with administrative rules. Frankly, these proposed rules do nothing to benefit the health and safety of the residents living in Adult Foster Care homes and Homes for the Aged.

The rule-making process allows the governor to implement these changes without meaningful oversight. Unfortunately, this privilege has been abused many times in recent years to the detriment of several industries and at a substantial loss of taxpayer dollars.

Consider recent history:

The governor began by developing a series of stringent regulations that would penalize Michigan home builders and send construction jobs out of state. She then moved to the insurance industry, establishing rules that would increase insurance costs for more than 60 percent of Michigan policyholders.

In both instances, the governor appeared to be sacrificing the state's critical business and economic interests to satisfy special interests. Fortunately, the courts saw the harm inherent in her proposed regulations and stopped both efforts from moving forward.

Today, the governor is moving on to the AFC industry. Although an industry workgroup was working to update the rules for AFC and HFA communities, the governor abruptly called a halt to workgroup dialogue and issued her own set of regulations - ones not even written by the departments that would oversee them.

I am extremely concerned about this process and the impact on vulnerable citizens. From what I have seen and heard so far, the rules are likely to cause long-term harm to Michigan's AFC and HFA communities.

I urge the governor to listen to families and the assisted living industry, and reconsider the process and substance associated with these rules. We must be committed to supporting high quality comprehensive services to Michigan's most vulnerable adults - not special-interest groups.



# NEWS CLIP

Questions? Call (517) 372-4400

The Grand Rapids Press

December 17, 2005

By James Tuinstra

Special To The Press

## **Michigan's disabled lose under proposed rules**

We at Hope Network are proud to provide caring, compassionate and professional services to nearly 8,000 of Michigan's adults affected by developmental, psychiatric or physical disabilities. Our concern is that the residential services we provide in 26 Michigan counties will be compromised significantly or eliminated if new rules proposed by Gov. Granholm's administration take effect.

I'm among the many stakeholders in the assisted-living industry who are frustrated with the process facilitated by the administration to draft proposed costly and unnecessary rules for Adult Foster Care (AFC) and Homes for the Aged (HFA). It has been difficult to not only get information but to also have a voice in the process. For example, the stakeholders were brought in at the 11th hour to react to these fairly comprehensive rules. During a Nov. 30 House Appropriations meeting, a Department of Human Services spokesman was unable to name the authors of the draft.

These onerous regulations would reduce direct services and increase costs for the most-vulnerable citizens. In addition, they would threaten worker- privacy rights and unfairly favor collective bargaining efforts by union organizers.

If adopted, Gov. Granholm's proposed rules would have a detrimental impact on the availability and quality of care of approximately 50,000 AFC and HFA residents in our state. These rules require every licensed setting, regardless of size, to establish health and safety committees to do work already required by law. In Hope Network's case, this means each of our facilities would be required by law to establish health and safety committees. This additional -- and redundant -- requirement would drive up costs statewide by an estimated \$35 million, according to the Coalition for Affordable and Quality Care.

One of our challenges is to provide a caring quality workforce. What these proposed rules do is hinder our efforts to recruit and maintain a quality workforce. For example, the rules require the public reporting of employees' private and confidential information, including Social Security number, address and birthdate. Also made public would be wages, benefit structures, turnover rates, employment records and recruitment and retention information. These

requirements conflict with Michigan's identity theft protection laws -- and provide substantial disincentives for individuals wishing to pursue careers in the AFC and HFA homes.

The state already has access to this information when it reviews our staff records during the renewal process. Furthermore, such requirements have no precedent in other states, and are perceived as a first step toward mandatory collective bargaining. Another substantial negative aspect of the rules changes: the preferential treatment given AFC and HFA licensees with collective bargaining agreements and to licensees engaging in multi-employer collective bargaining activities.

Under the proposed rules, these licenses would be deemed automatically compliant with the proposed licensing requirements and the matter of compensation, benefits and staffing rules becomes exempt from scrutiny. It should be noted that there are no other regulated professions or industries in Michigan that defer to union status or collective bargaining to measure compliance with administrative rules. These rules would not enable us to increase wages and benefits to our staff. Most of our funding comes from County Mental Health Agencies, and there is no funding mechanism to reimburse us for these proposed additional administrative requirements.

The rules proposed by the Granholm administration for the AFC industry would drive costs up unnecessarily with no recognizable benefits for residents. Many facilities that endeavor to maintain viability as quality, cost-conscious care-service providers will be forced to a) raise prices to cover the costs of burdensome and redundant administrative requirements, which also divert attention from providing hands-on care to residents, or b) close their doors permanently, leaving less choices for families requiring these services.

The bottom line: These rules do little to enhance the system; instead, they detract from its ability to effectively serve the needs of Michigan's elderly and disabled adults. The focus of licensees should be on the care, not the paperwork. We must work together to fight for those who are unable to fight for themselves. I encourage people to please send a message to Gov. Granholm to halt this rules process.

James Tuinstra is president and CEO of Hope Network in Grand Rapids.





# NEWS CLIP

Questions? Call (517) 372-4400

MIRS News

December 1, 2005

## Who's Moving Too Fast On Rule Changes?

Adult Foster Care (AFC) workers and the Department of Human Services (DHS) agreed at a joint appropriations committee meeting this morning that everyone's jumping the gun on suggested administrative rule changes affecting AFCs.

They just don't agree on who moved first.

The seven proposed changes would loosen up access to employee information, require the implementation of AFC commissions and allow collective bargaining entities to automatically qualify under certain rules.

Those opposed to the changes — adult foster care facility owners and the Coalition for Affordable and Quality Care — believe the DHS and the Department of Community Health (DCH) were spoon-fed the suggested changes from union groups looking to boost membership during the tenure of a Democratic governor.

The opposition argues that the DHS and DCH should have discussed the bills for at least eight months instead of making a decision after two months. For example, it took two to three years to make previous changes to rules affecting homes for the aged. It also took two to three years to change daycare center rules.

The point being, administrative rule changes take a long time to perfect. The DHS and DCH think the opposition is jumping too far ahead by assuming the changes are set in stone. The rules haven't been presented to the Legislature, which makes them preliminary in nature, a fact the DHS and DCH continually pointed out to the opposition.

Nonetheless, the issue was brought up at a joint hearing of the House DHS Appropriations Subcommittee and the House DCH Appropriations Subcommittee. DCH Approps Chair Bruce CASWELL (R-Hillsdale) said the two committees could do nothing to impact the process at this point, but they wanted those opposed to the rules to be given a chance to be heard.

Rep. Alma Wheeler SMITH (D-Ypsilanti) was irritated that after an hour of testimony from the opposition, DHS and DCH still hadn't had a chance to speak. Without knowing how the process was carried out, or what the departments intended to do, the Legislature and opposition were putting the cart before the horse, Smith said.

"It seems to me that you accuse the departments of rushing to judgment but it seems that we, here, are rushing to judgment," Smith said.

Several people employed in the adult care industry testified against the bills this morning. Most used the argument that giving homes with collective bargaining agreements special privileges does nothing to improve patient care or staffing conditions. They didn't like that the state was proposed a central database of information to track adult care employees that contained the employees' social security number, date of birth and other personal information that could be conceivably accessed through the Freedom of Information Act.

"We're not against unions," said Robert McLUCKIE, from the American Association of Mental Retardation. "We're against using unions as a way to push quality of care ... It's absurd."

Scott SCHRUM from Residential Opportunity Inc. said he doesn't like to see employees paid \$7.50 to \$8 an hour for the work they do. They are "grossly underpaid." But instead of incentivizing unions on the industry and increasing administrative work, the state should be increasing funding for elderly care. To do one without the other could put some of the small operators out of business.

DHS' Jim GALE stressed that the department is still preparing drafts for the Legislative Service Bureau and nothing has been formally proposed, yet. He said DHS was given the rules as suggested changes by the administration, who received input from "consumer groups" and "advocates for employees." He said the goal was to get a better handle on high staff turn-around numbers and improve the care of patients and those who are offering their input are being listened to.



# NEWS CLIP

Questions? Call (517) 372-4400

Gongwer News Service

December 1, 2005

## FOSTER CARE PROVIDERS UNHAPPY WITH D.H.S. REGULATIONS

Dozens of adult care providers gathered on the third floor of the Capitol Wednesday to express their displeasure to lawmakers with a set of proposed state regulations, but some legislators said the providers' efforts were misguided.

Adult foster care representatives from around the state testified before the House Appropriations subcommittees on Human Services and Community Health, and were outraged by changes that would require additional paperwork, track employee records, increase training and encourage unionization. Many providers said additional training and paperwork would drive up costs, and a state-maintained central employee database, required by the rules, would infringe on employee privacy rights.

But one committee member expressed irritation with the hearing process. Rep. Alma Wheeler Smith (D-Ypsilanti) told the group that she sympathized with their concerns but legislators were not in a position to rewrite regulations drafted by the Department of Human Services.

"I think many of you came here with the expectations that this committee was going to be able to do something. I just want you to leave here today with the clear understanding that while you have been heard ... there is nothing we can do here," she said.

Providers attending the hearing, including members of the Coalition for Affordable and Quality Care said their efforts were not in vain. Donna Halinski of Marketing Resource Group, who helped organize coalition members and the trip to Lansing, said members got their message across to legislators. Lawmakers, she said, were moving particularly fast on adult foster care issues with very little input from industry stakeholders.

"We have major issues with both the process being flawed and the rules themselves. As the rules are today, they would divert direct services from resident care to redundant administrative responsibilities. Today, was a great opportunity to voice those concerns," she said.

Jim Gale, spokesperson for the Department of Human Services said the rules are still in the developmental stage.

One of the disputes in the issue is a draft of the rules that could increase

training requirements and collective bargaining provisions. Mr. Gales said he did not know who created the draft, but that it is not the final version of the rules.

Coalition members speculated the author of the draft is someone invested in the labor movement. They said union organizations would not benefit employees because it would create the illusion that workers rights were being addressed, and it would require membership fees for a workforce that makes about \$8 an hour.

Chair of the Subcommittee on Community Health, Rep. Bruce Caswell (R-Hillsdale), requested the hearing in response to constituent concerns. He said the testimony provided a public forum for industry stakeholders to express their concerns and open up a public dialogue about adult foster care and homes for the aging.

"I decided to have the hearing because the impact of these rules could have a considerable financial cost, and that affects appropriations," he said. "And it didn't seem that the process was inclusive to all the people involved."

He added, "I hope that we go back to the table and start over and do what's best for the citizens of the state and have a better conversation."

Ms. Smith said starting over isn't necessary because there is still time to reevaluate and redraft the rules. She said the rules are not officially before anybody for comment or discussion because they are still being formed.

Addressing the group before the committee, Ms. Smith shared her concerns. "My problem with this process today is not that it gave you input but gave you false hope that we were going to be able to do something. And that is incredibly unfair."



# NEWS CLIP

Questions? Call (517) 372-4400

Crain's Detroit Business

November 28, 2005

By Michelle Martinez

## **Assisted-living wage, benefit fight likely *Owners cite \$35M tab for licensing changes***

Owners of assisted-living centers say they may fight proposed changes to state licensing rules that could set minimum wage and benefit levels for workers in facilities caring for about 50,000 older or disabled adults statewide.

"You can see the unions all over this," said Ronald Paradowicz, president of **Courtyard Management Co.**, which manages two, 80-bed assisted-living centers in Farmington Hills and Walled Lake.

The proposed requirements would cost providers about \$35 million a year in additional administrative costs, according to the **Coalition for Affordable & Quality Care**, a group created by four industry associations to combat the changes.

But the union representative involved in the rulemaking, former state Rep. Nick Ciaramitaro, denied organized labor had gotten special status in formulating the changes. Ciaramitaro is legislative director of the **American Federation of State, County and Municipal Employees Council 25**, which represents about 5,000 assisted-living workers in Michigan.

In August, the **Michigan Department of Human Services** and **Michigan Department of Community Health** assembled an industry workgroup to make recommendations for an update to state rules.

The group included assisted-living providers, department officials, a union representative and other stakeholders. But providers say their input was discarded and replaced with state-penned revisions that lean heavily on union recommendations.

If finalized, the rules would require providers to regularly report employee information including Social Security numbers, reason for termination, staffing ratios, and wage and benefit levels to a statewide information clearinghouse. Providers would also have to staff and house committees for such things as health and safety, fixed staffing, and health and benefits at each location they manage.

One provision says that the state can determine pay and benefit levels for assisted-living employees, Paradowicz said. Providers that have a union contract would be deemed in compliance with that regulation.

"How can a bureaucrat know what's adequate in our market?" he asked. "As drafted right now, it's going to be onerous for (all licensees)."

Ciaramitaro said the requirements were intended to provide a wage and benefit structure for workers and a statewide registry to connect workers and employers. Average wages of \$7 to \$9 an hour and scarce benefits have contributed to turnover rates of about 80 percent, he said. Stemming that flow will result in better care, he said.

Ciaramitaro said Gov. Granholm's office has been "friendly" to the union's efforts, citing health care's growing importance to the state's economy. Aging baby boomers will lead to a doubling in demand for assisted-care workers by the end of the decade, he said.

Health care unions are already seeing large membership boosts.

The **Service Employees International Union** added 41,000 Michigan home health care workers to its ranks in April. And Ciaramitaro said the AFSCME is pushing to organize about 24,000 assisted-living workers.

Andy Farmer, associate state director for health and supportive services for **AARP Michigan** and a group participant, said he wasn't clear as to who had developed the rules distributed to workgroup participants. Union contracts as evidence of state compliance, however, remains a big area of contention, he said.

Worker protections and lower turnover rates are worthy goals, Farmer said, but not something that's assured by collective bargaining agreements or by the rulemaking process.

"We don't think that's an adequate litmus," he said.

Providers say they'll likely have little recourse to fight the changes.

"These are moving on the fast track and we're just very skeptical of the process," said Kathleen Murphy, general counsel for the **Michigan Assisted Living Association**.

Human Services says it's still collecting feedback on the proposals and that no stakeholder has had disproportionate influence on the process. Spokeswoman Karen Stock said all stakeholders, including providers, had a role in formulating recommendations. Public hearings and an online posting of the proposed rules will provide additional opportunities for providers to air concerns before the rules are formally presented.

"They can respond in detail. That's what we want," she said. "It will influence the outcome."



# NEWS CLIP

Questions? Call (517) 372-4400

**The Detroit Free Press**

*November 28, 2005*

**BY DAWSON BELL**  
FREE PRESS STAFF WRITER

## **Group home owners upset State suggests patience with rule change proposals**

Licensing officials for adult foster care facilities in Michigan are getting an earful of criticism over proposed changes in the regulation of homes for infirm and elderly persons -- including complaints that the changes are being driven by organized labor.

Industry insiders -- including home operators and patient advocates -- say they fear the changes that could go into effect next year will be costly, counterproductive and ultimately detrimental to the quality of care for patients. Many of them also say unions like the American Federation of State, County and Municipal Employees are pushing the new rules as a recruiting tool.

Union representatives insist the quality of foster care suffers when wages are low and staff turnover is high, as they claim is common, and that the state has a responsibility to improve the situation.

The state Department of Human Services, which denies that union interests have hijacked the preliminary process, wants parties on both sides to be patient. None of the proposed rules, covering more than 5,000 licensed facilities housing about 50,000 people, has been finalized yet, DHS spokeswoman Karen Stock said last week.

"It is way, way, way early in the process," she said. "Until we have something to look at it, I think it's too early to say what it will do."

At the center of the uproar is a set of draft proposals that emerged from the department this fall. The draft covered a wide range of issues, from health and safety requirements to setting standards for staffing and employee compensation.

Linda Lawther, president of the Michigan Center for Assisted Living, said if the rules went into effect in their draft form, there is "absolutely no question that this will create more paperwork ... and divert caregivers from patients."

One provision, for instance, would require each home to have a health and safety committee that regularly meets and reports. But that is a one-size-fits-all approach to the regulation of an extremely diverse industry, said Kathleen Murphy, general counsel for the Michigan Assisted Living Association. Adult foster care homes range in size and scope, and serve vastly different populations, she said.

MALA estimates there are about 36,000 residents of adult foster care homes in Michigan and about 14,000 in licensed homes for elderly persons.

Although Murphy says that some of the rule revisions and updates are reasonable, she said there have been no massive scandals or patient tragedies in Michigan group homes that would justify sweeping changes.

She said claims that the rewrite is intended to improve patient care are belied by the inclusion in the draft of reporting waivers for homes that run under a collective bargaining agreement. This sends a signal to licensees that their troubles will go away if they open the door to labor unions, she said.

Nick Ciaramitaro, a former Macomb County legislator now working as legislative director for the AFSCME, said unionizing the group home workforce would be good for workers and patients.

It is scandalous, he said, that pay and benefits packages for group and nursing home workers, "the people who care for our parents and grandparents, and pretty soon will be caring for us," are less generous than those in the fast food industry. Turnover among group home workers is also very high, he added, with some facilities reporting turnover rates of up to 300% a year.

The industry's defenders said facilities with turnover rates that high are rare, and that rules should be flexible enough to let inspectors focus on specific problems rather than setting rigid standards.

Ron Paradowicz has been managing group homes in Oakland County for a decade and says everyone he knows agrees that minimizing staff turnover is an admirable goal. At his facilities in Wixom and Farmington, Paradowicz estimates that 75% of his employees have been on the job at least a year, and some for a decade or more.

"Right now, we spend a huge amount of time trying to retain staff," he said. "I'm working on that all the time. I have a real problem with the state coming in to tell me how to do something that I am already doing."

DHS spokeswoman Stock said she expects a final draft to be given to a state rulemaking agency within a few weeks. A public comment period and hearing will follow, she said.

"Not everyone will see exactly what they wanted to see. But let's wait until we have something to look at," she said.

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# NEWS CLIP

Questions? Call (517) 372-4400

Kalamazoo Gazette

November 25, 2005

## Adult-foster-care homes want to slow rules plan

A group representing adult-foster-care homes and homes for the aged is trying to apply brakes to proposed rules that would impact how those facilities are operated.

A group calling itself the Coalition for Affordable & Quality Care wants the Michigan Department of Human Services and Gov. Jennifer Granholm's administration to slow down the process for approving rules it contends overwhelmingly represent interests of organized labor. The coalition claims it had no knowledge of who proposed the rules or when they were formulated.

Members of the Coalition for Affordable & Quality Care, representing assisted-living providers statewide, recently discussed their concerns with Kalamazoo Gazette editors and reporters.

They suggested that the Granholm administration was heavily influenced by union interests in writing the proposed rules.

"In fact, the rules really don't address quality (of care) at all," said Linda I. Lawther, president and CEO of the Michigan Center for Assisted Living in Lansing, a coalition member. "They go more toward workforce issues."

The new rules would impact the 50,000-plus adults in Michigan's assisted-living facilities, including about 120 in Kalamazoo County: Residential Opportunities Inc., Alterra, Fountainview Retirement Village of Portage, Heritage Community of Kalamazoo, Park Place Assisted Living and Sojourner House.

"But there are many, many small ones" with one to three clients, for instance, said Scott Schrum, executive director of Residential Opportunities, Inc.

As outlined, the seven sets of rule changes would require each adult-foster-care facility to establish a health and a safety commission to review and process concerns at each facility, "work that is already required by law," according to group materials. It would also invade worker privacy by requiring information from providers and workers that would become part of public record. Increase costs -- as part of regulatory compliance -- would perhaps impede smaller providers from continuing to operate and favor adult-foster-care providers

with collective bargaining agreements between the direct-care employees and the licensee.

The group is not willing to sit and wait for a public hearing on the proposed rules, saying such a hearing would be a "formality" for approval.

In an Oct. 31 letter to Schrum, James B. Gale, director of the Michigan Department of Human Services Office of Children and Adult Licensing, wrote that "the entire rule promulgation process is intended to be completed by April 2006." That had been the time through which coalition members felt they could respond to the rules.

Maureen Sorbet, a spokeswoman for the governor's office, said the process was not closed and that comments could still be filed. She said representatives from the UAW and AFSCME were invited to participate -- though no one from the UAW did -- in the formulating discussions; other participants represented licensees, residents, direct-care advocates and representatives from the Department of Community Health, Office of Services for the Aging and Office of Children and Adult Licensing.

The group said at least 1,000 letters were mailed to the governor's office, including some from the AARP, asking that more time be given to review the rules. "There was no favorable response to this," Kathleen Murphy, general counsel for the Livonia-based Michigan Assisted Living Association, said of the request.

Coalition representatives said they were surprised to see references in the rules to wage and hourly benefits for employees.

"We haven't seen this language before," Murphy said. "This took us by surprise."

However, she added that "this really isn't about union or nonunion. (This is about moving) away from directed consumer service to administrative (costs)."

Coalition members have alerted state Rep. Jack Hoogendyk, R-Kalamazoo, who sits on the Family and Children Services Committee and the Joint Committee of Administrative Rules, about the proposed rules. From 1994 to 1996, Hoogendyk and his wife ran an adult group home. He is currently a board member for SHALOM, Self Help Alternative Living Opportunities of Michigan.

"Other than suggesting or requesting that the administration reconsider, there is no power that we have to stop them," Hoogendyk said.

"All this is ultimately going to do is, tremendously, I think, raise the cost of care," Hoogendyk said. "It's going to put such an undue burden on these private providers, they're just going to throw up their hands and say, 'I can't do this anymore.' And it's going to be turned over to the state. And when the state does it, it's not going to be done as compassionately ... or as efficiently."

Providers like Sara Collison think the proposed rules would be burdensome and

say it's ironic that they could lead back to the same thing they sought to disband years ago -- government oversight and institutionalization. For 18 years, she and her husband, Glen, have been adult foster-care providers, opening their home to 11 adults in foster care, ages 27 to 55.

“Let's not be creating more institutions,” Collison said. “Let's keep this family-style that is going to benefit the clients.”



# NEWS CLIP

Questions? Call (517) 372-4400

**MIRS**

**November 22, 2005**

## **Some Concerned That Union Is Pushing Rule Change**

Administrative rule changes that could affect mental health providers and employees are murky at best and though they haven't received public comment, they're already being attacked.

The rules affect the Department of Community Health (DCH), the Department of Human Services (DHS) and 5,000 other human service organizations. Included in the proposal are seven changes. The most contentious is the one that gives special treatment to employers that are part of a collective bargaining agreement.

Any agency that's a part of a collective bargaining agreement would be assumed to meet health, safety and protection standards for its employees and caregivers.

At the end of October, Sen. Alan CROPSEY (R-Dewitt) told the Senate that he didn't think any of the seven sets of proposed rule changes should be considered final because they're premature. For one thing, they're being rushed forward way too quickly, Cropsey said.

Despite lots of opposition from stakeholders in the industry, workgroups examining the rules have pushed them forward in two months rather than eight, which is when workgroups are supposed to come forward with its recommendations, Cropsey said.

"Keep in mind that in order to promulgate seven sets of advised administrative rules governing more than 5,000 human service organizations, serving more than 40,000 of the most vulnerable citizens in the state of Michigan, this process should be thorough, methodical and inclusive," he said.

DCH Spokesman T.J. BUCHOLZ said that he's talked to several people about the rule changes and that none of them are in any rush to get the rules pushed forward.

"We must get public comment first before we can implement these rules or even move to the next step," he said. "We have to get them through the public comment process and I anticipate there will be a lot of comment."

Bucholz couldn't answer all of the questions MIRS had about the rule changes and kept reiterating that nothing could be or would be considered to be done until the public had its say. He also didn't have a specific date for when the public would have their time at the mike but did say it would be soon.

Bucholz didn't know if the rules came about because of a problem that needed solving. He did say that rules are periodically open to change. As for special treatment to collective bargainers, Bucholz didn't know anything but said, "I don't think that one rule can be passed over for

another."

In August, Cropsey received a letter from an administrator, presumably in the health industry, who claimed that changes were being proposed by the Office of Children and Adult Licensing Department at the request of the American Federation of State, City and Municipal Employers (AFSCME).

The AFSCME is a labor union that represents public service and health care workers. In the letter, the person asserted that if they were proposed by the AFSCME, the rules would benefit the AFSCME and not necessarily benefit the consumer.

"I know some of the union groups have given us some feedback on the rule changes and advocates have as well," Bucholz said.

Whether or not they're behind the rule changes, Bucholz isn't sure.

BROADCAST TRANSCRIPT

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Date December 01, 2005  
Time 10:20 AM - 10:40 AM  
Station WJR-AM (ABC) Channel 760  
Location Detroit  
Program Frank Beckman

FRANK BECKMAN, anchor:

We're spending a lot of time up in Lansing this morning with the House and Senate and a lot of important legislation being considered and passed. And there is one bill that is emerging as a real issue bill that could affect 50,000 people cared for as part of the assisted living community in our state.

A battle over the care quality, affordability of their care. Choices that they have for care providers. The battle is heating up. And what does it all involve? Well, let's get it from the two people who are right in the midst of it. Nick Ciaramitaro is with us.

He is from Roseville. The director of legislation and public policy for AFSCME, American Federation of State County and Municipal Employees.

Nick, good morning.

Mr. NICK CIARAMITARO (AFSCME): Good morning.

BECKMAN: I hope your cell phone holds up there.

Mr. CIARAMITARO: Yeah, I hope so, too.

BECKMAN: Nick's working in between buildings. You've got trucks going by and so we'll do the best we can with that. Nick--

Mr. CIARAMITARO: If I go in the building I lose you completely. I have to stand out in the cold.

BECKMAN: Well, don't--I know you're willing to suffer for your cause. So thank you for doing that. And Bruce Caswell, state representative from Hillsdale and Branch County is on the other side of the issue.

Good morning, Representative Caswell.

Representative BRUCE CASWELL (Branch County): Good morning, Frank. How are you doing?

BECKMAN: I'm good. Let's start with you. Give me an idea of what the effort is in Lansing that would impact these 50,000 people who are in the assisted living community right now?

Rep. CASWELL: Well, Frank, what's happened is that there

was a work group set up--and these are rules--this is not legislation that we're talking about. These are rules that are being proposed by the executive branch. A work group was set up early in the summer and they were told, according to testimony yesterday, that they were going to have a year to work on coming up with new revised rules for the adult foster care homes.

Now I want for your listeners--assisted living--kind of a generic overall term. And under that are two groups: adult foster care and the homes for the aged. Over the last--roughly the last three years the rules for the home of the aged--a lot of those rules were revised--and it took three years to get that done.

The adult foster care homes--there were rules and revisions brought forth. The process was truncated--it was just stopped. They were told they were going to have a year to do it and then all of a sudden they were told it had to be done by the 13th of October and that was the end of it.

Everybody is pretty much up in arms because when you're dealing with these types of fragile individuals--patients that we have around the state--you're dealing with people that we have to be very careful with in terms of how we set rules, what we do and how we change those rules.

BECKMAN: What rules are being proposed to you?

Rep. CASWELL: Well, there were several things--one is that--

Mr. CIARAMITARO: Can I just break in? Because I think a couple of things that have to be corrected in Representative Caswell's remarks. First off there are no rules. There are proposals sitting in the department that have come from a variety of sources--none of which have been agreed to or proposed by the department or by anybody else.

There is a problem that needs to be addressed. The work group he talked about I sat on it and it was totally non-productive in trying to reach consensus. So, it was truncated because of its lack of progress and we were looking for other ways to discuss the solution to a very serious problem in this state.

BECKMAN: So, Nick, what is--what is--what is the--Nick, what is the problem?

Mr. CIARAMITARO: What is the problem? The problem is that we are in a society that is--that needs increasing numbers of direct care workers and we have a serious problem with turnover among those direct care workers. Part of that--there's a lot of reasons for that. There was a study that was done by Michigan State University that indicated part of the problem was a general lack of respect for people to do this work.

The fact of the matter is that we pay these people less than what we pay people to work at McDonald's or Burger King or other fast food restaurants. That they have virtually no benefits so they tend to leave the field. Now there's a cost problem and certainly financial problems in the state. Nobody has proposed in the government a

solution to that problem.

A number of people, including my organization, have talked with the governor's office, have talked with a variety of groups and have talked with consumer groups about some options that we're looking at. One of those options is to say to the providers if you are going to take the state's money--if you're going to take taxpayer's dollars and promise us that you're going to provide a certain level of service, then you have to show us that you have sufficient number of staff to provide that service properly.

Now, the providers say the problem with that is the state isn't providing sufficient dollars and they have a point. But if that is the case then we have to review the whole system. There's no reason to suggest that anything--as many of the providers have--and one of the exasperating things about this is one of the provider organizations--one that's been leading the charge against these non-rules that don't even exist yet--I talked with two and a half years ago about trying to resolve this problem by trying to find some ways to resolve this problem and was basically told there's nothing that can be done.

BECKMAN: All right, let me try to cut through some of the red tape of the discussion here for a moment. Is part of your effort in this, Nick Ciaramitaro, to have these people represented by unions? The employees in the foster--

Mr. CIARAMITARO: Well, they're represent--

BECKMAN: Hold on. Let me finish the question. Let me finish the question. And there's nothing illegal about it or wrong with it. But my question is simply is your effort to organize these people and have them become members of AFSCME, and then is your corresponding assertion that these people will be better employees and offer better care once they're union members with better pay and benefits?

Mr. CIARAMITARO: We are obviously asking people, or trying to organize folks. That's what labor unions do. Whether they organize or not is their decision. It's all done by democratic vote. You can't become--you can't form a union unless you vote--a majority of the members vote to join a union.

About 5,000 of the 25,000 out there have done that. Will they become better unions simply by signing our card--employees simply by signing our card? We intend to fight for the training, for the safety standards that protect both consumers and the workers.

BECKMAN: All right. Now let me get to Representative Caswell on that. Representative Caswell, what's the matter with what Mr. Ciaramitaro is saying here that if you keep people on the job longer so you don't have the high turnover--if you give them more pay, better benefits, better respect on the job won't they do a better job helping the people in the foster care facilities?

Rep. CASWELL: I don't think anybody would disagree with that and I would point out to you, Frank, that back in the late '90s the legislature passed language which allocated money and required that it be passed through to the--I guess we call the folks at the basic care level. And that



was done.

As a matter of fact it was done twice because the first time it was done there was a few folks left out. This administration has never proposed that and I can tell you, from the standpoint of the House of Representatives, we've identified enough dollars in this last budget go around that we would be more than happy--I believe--to do that sort of thing by cutting waste in other parts of government.

I might also add that there's been a long history--there was a co-employer issue back in the '90s where AFSCME was trying to force all these folks that are working for these adult foster care facilities around the state and others to be considered state employees so that they would be paid at the state level and get state benefits and so on and so forth. And the courts turned that down. They said that's not proper.

BECKMAN: Well, what is your--what is your concern in all this with the employees?

Rep. CASWELL: My concern with all this in terms of the employees is that first of all their privacy rights be protected. These proposed rules indicate that there's going to be a statewide registry with every employee's Social Security number and all sorts of other information about them identified as a staff registry in Michigan. That's totally unnecessary.

This information is already looked at when the state goes out and does license renewals of these various homes around the state. The main concern I have is that you have in the adult foster care facility realm anywhere--adult foster care facilities--from one person up to 20. It can't exceed 20. You have a wide variety of individuals, many of whom live in the home where these folks are being taken care of.

These proposed rules are requiring health committees, safety committees--designate how they're being made up. They're assuming that if they're unionized that they're not even--the state's not even going to look at whether or not the wages are proper or improper.

Well, why is the state getting involved first of all in this wage situation. And if we do feel--the administration does feel that there's a problem with the pay that we're giving for these folks, then why haven't they done the same thing that was done back in the late '90s and that's--just do a wage pass-through?

That is the proper way to look at it and let's leave the decision as to whether or not somebody wants to unionize or not unionize at the local level. Let's not bring it to Lansing and make life more difficult for license renewals for those people that don't unionize as opposed to those who do unionize.

BECKMAN: All right, Nick. It looks like it comes down to a union issue, quite frankly, with the governor supporting you from what we have been told. How do you see that any differently? I think we lost--

Mr. CIARAMITARO: The senator has his history wrong and

that's part of the problem. I was in the legislature for 20 years and was there during the co-employer issue. Nobody ever argued that these people should be state employees and paid at the state employee level.

They did say that since about 70 percent of the dollars for many of these types of facilities are covered by state tax dollars that the state should be at the table where there were discussions going on about what the proper wages were where we represented those people. The question of whether somebody is going to unionize or not is not in these rules and not part of them.

The problem we're having is we're debating a proposal that doesn't even exist yet. Some of the things Representative Caswell suggests I agree with. I mean, I would love to see this legislature move forward and pass through legislation. The last time that he talked about it in the late '90s in which there was pass-through legislation--seven years ago for people who are making less money than you make in fast food restaurants to take care of our parents, grandparents and disabled children.

The last time we gave them a pass-through legislation I chaired the subcommittee that handled that budget. It didn't come as an initiative from the governor at that time, it came as an initiative from the chairman of the subcommittee. And I would love to see the governor do that.

But we are looking--and we would welcome Representative Caswell's participation at all sorts of mechanisms to try and improve the care of the people who are dependent upon us for their care. These people which require care: the frail elderly, the developmentally disabled, people with mental illness have very intimate needs.

The care is very intimate. It's very difficult work. It's hard work. There needs to be a level of trust between the consumer and the worker. When you have a different worker every three months, as is the case in some facilities, that's a problem. Now how we solve that problem--there are lots of options.

BECKMAN: Let me just--let me just--

Mr. CIARAMITARO: Representative Caswell doesn't like one of the suggestions that's floating around out there but nobody has attempted to put that into place yet.

BECKMAN: Let me ask you one final question here. Are you asserting at all--do we then believe that under the current system that the residents in these foster care homes are not getting proper care?

Mr. CIARAMITARO: Oh, I'm asserting that in many instances--not in all--there are good homes and there are bad. But there is a serious problem with sufficient and quality care around the state simply because we cannot attract and do not properly train enough people to provide services that are needed.

BECKMAN: Well, can't the same thing be said about every hospital in this state too? That there are good ones and there are bad ones even though there are rules about the

people who are employed there? There's no guarantee, in other words, that getting people--

Mr. CIARAMITARO: There's never any guarantee.

BECKMAN: Right.

Mr. CIARAMITARO: There's a problem. And when there is a problem, we need to sit down and try to figure out how to solve that problem.

Rep. CASWELL: Frank, I want to mention to you, you know, Nick brought up the fact that three months--the average life expectancy, if you will, of a K-12 superintendent in this state is less than 12--less than three years now. Thirty months is not unusual for a lot of professions and superintendents get paid very well.

The point I want to leave you with is this. The people who run these homes are extremely caring individuals and I want to tell you a story. A kid that I coached back at Pittsford when I was there teaching, is running an AFC home. He and his wife lived there and he is working unbelievable hours to provide care to these people.

I had my aunt Lorraine out in that home and I can't think of anybody that I would rather have take care of her than this individual. And we're talking AFC homes all over this state that are small like this one that care more than people can ever imagine in taking care of these folks.

And it's those kinds of homes that are going to be put in dire jeopardy of being closed with these additional bureaucratic rules and regulations, which we haven't even been able to go into, all of them, here today. That's my fear.

And when I get to the point where I have to put my parents or I have to put myself into a home, I want it to be a home that's small. I want it to be a home that's caring. And I tell you, we have a lot of those around the state that would be put in jeopardy if this particular proposal--these particular proposals go through.

BECKMAN: All right. When will they be considered again?

Rep. CASWELL: What I--

Mr. CIARAMITARO: There's no timetable because all you've got is discussions among our organization, a lot of consumer organizations who represent those--those people--the parents, grandparents and disabled citizens. Providers who have generally said we just don't want to talk about the problem. And that's the large provider groups, not the small individual provider groups. There is no timetable because there are no rules yet.

BECKMAN: All right.

Mr. CIARAMITARO: We will ask the governor to look at this and propose rules and we will be very happy if she does propose rules but until there is something to discuss--until the rules are finalized--to criticize them is like criticizing the house before you've even seen the blueprints.

BECKMAN: All right, I'll tell you what--gentlemen--we've got to end it there. Nick Ciaramitaro, we thank you for joining us from AFSCME, and next time let's get you on a landline because it's tough to interact with the cell phone.

Mr. CIARAMITARO: Yeah, I apologize.

BECKMAN: That's OK. We appreciate your participation. And Representative Bruce Caswell, as well.

Rep. CASWELL: And Frank, I have to tell you, when I told my boy at home I was going to be on the show today he asked me is it anything like Dr. Laura? Have a good day.

BECKMAN: If you need any further advice just ask.

Rep. CASWELL: Merry Christmas.

BECKMAN: And to you. Thank you very much. We'll--we'll follow that story. You know, what's interesting about this entire battle is that it--this was a line that was used in a column I did in the Detroit News several weeks ago by Mark Brewer. It's almost as if we're looking for a solution in search of a problem.

Is there really a problem within the care industry that would require that we change rules or create rules for the caregivers that would cost an estimated \$35 million? It would cost the industry--the people who run those homes--about \$35 million we're told. And the battle that we--we didn't get into all of it--you can't get into all of it without a two hour discussion--is--it seems to be that it's over union representation.

Yes they're trying to organize these workers but it would appear that they're trying to push through the rules to in essence allow AFSCME registration of these workers with--perhaps without a vote. I don't know. I don't know if it would come to that or not under this.

But AFSCME is a supporter of the governor and the governor--when you're a Democrat and you've got support you listen to those people who supported you in the election. When you're a Republican and you've got support you listen to those people who supported you in the election and you help them out. And that's just how politics works.

And the accusation from one side is that's what's occurring here. That the governor is in favor of creating these rules for the foster care centers because AFSCME wants them to go through to help them in representation of the workers. I hope that all made sense to you because it sure does to me.

# # #

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Senator Cropsey's statement is as follows:

About a decade ago when I was serving in the House of Representatives, I was chairman of the Joint Committee on Administrative Rules. One of the key things that we did as a Legislature on that committee was make sure that the rules were administered properly and that everybody who were involved in setting the rules had a say in what was going on.

I'm here today because I'm upset with the way the administration is promulgating rules for 40,000 of the most vulnerable citizens that we have in the state of Michigan.

There are seven sets of proposed Michigan Department of Community Health and Michigan Department of Human Services administrative rules relating to adult foster care homes for the aged licenses that I don't believe should be promulgated for several reasons. Keep in mind that in order to promulgate seven sets of advised administrative rules governing more than 5,000 human service organizations, serving more than 40,000 of the most vulnerable citizens in the state of Michigan, this process should be thorough, methodical, and inclusive. I noticed that the Governor of this state is always talking about inclusion and bringing everybody together.

The Michigan Department of Human Services and the Michigan Department of Community Health have attempted to make vast changes in these rules in just two months' time, despite strong opposition from the stakeholders. To give you an example, the task force that has been meeting—the workgroups that have been meeting—originally were supposed to meet for eight months or longer and come forward with their recommendations in April of next year. This has been truncated to just barely two months, in which they are supposed to come back with their recommendations this last week, on October 13th. Instead of taking eight months, they've tried to shove it into only two months.

There are several problems with these administrative rules, and I hope the administration will listen instead of trying to jam this down our throats. First of all, they give preferential treatment and deeming status to licensees with collective bargaining agreements and to licensees engaging in collective bargaining activities. They've made this a very political process.

Second of all, the rules impose burdensome and duplicative administrative reporting requirements that divert resources away from direct consumer services—from direct care of the most vulnerable and the neediest people of this state.

Next, many of the proposed rules lack statutory authority or conflict with well-established state laws. For example, the proposed rules deputize the Michigan Department of Human Services to enforce wage- and hour-related matters. Not only is there no statutory authority for this change, but it compromises the Michigan Department

of Human Services' ability to focus on real consumer protection issues as opposed to monitoring employment practices.

The other area that I am very troubled about that everybody who is a conservative, everybody who is a liberal, everybody who is concerned about privacy issues should be asking questions of this administration. The proposed rules require mandatory reporting of employees' personal information, including Social Security numbers, addresses, and date of birth. This is in direct conflict with the recently enacted identity theft protection laws.

October 6, 2005

The Honorable Jennifer Granholm  
P.O. Box 30013  
Lansing, MI 48909-7513

Dear Governor Granholm:

As participants in the recently formed MDCH/MDHS Ad Hoc Rule Revision Workgroup, we are contacting you to restate our commitment to work openly and cooperatively in the development of the administrative rules at hand. We are highly committed to quality, person centered planning, health and safety; staff training and competency; recruitment and retention of direct care staff; adequacy of direct care staff wages and benefits; and many other issues addressed in the proposed rules.

Many of us worked openly and collaboratively throughout the recent process that resulted in the Governor's Long-Term Care Task Force Recommendations. The Long-Term Care Task Force process was remarkably inclusive and carefully studied the many strengths, complexities and weaknesses of our long-term care system in Michigan. The Task Force analyzed many issues that are at the very heart of the administrative rules under consideration. The Task Force made very specific recommendations on how to address assisted living and how to create a talented and valued long-term care workforce. Attached are relevant excerpts from the Governor's Long-Term Care Task Force Recommendations.

We are gravely concerned that the Ad Hoc Workgroup has not been given the latitude to implement the Task Force Recommendations. We strongly contend that these Task Force Recommendations should be the driving force for updating the administrative rules in question. To continue this rule promulgation process without adequately addressing the broad public policy and regulatory issues that were identified by the Task Force will undermine the credibility of the Task Force's Recommendations. It will also ignore an immediate and efficient opportunity to implement many of the important recommendations in the Task Force's report.

We are also concerned that the Ad Hoc Rule Revision Workgroup has not had sufficient time to adequately review all of the proposed changes and relevant statutes. The hurried schedule of meetings leaves time for only a superficial review and little real conversation. The facilitation of the Workgroup needs improvement. The tone of the meetings lacks the open and collaborative spirit that was built in the Task Force process. Our October 13, 2005 deadline for completion is fast approaching. We have not had the opportunity to substantively review all seven sets of the rules.

In closing, we respectfully request that you give careful consideration to our concerns and help us in several ways. At a minimum, we urge you to extend the deadline for review, broaden the scope of the rule revision process to incorporate the Recommendations of the Long-Term Care Task Force and appoint an independent facilitator to the Ad Hoc Workgroup.

Again, we remain committed to this important Ad Hoc Workgroup and the Governor's Long-Term Care Task Force Recommendations. Thank you for your consideration.

Sincerely,

*John Lawrence Pres/CEO*  
Michigan Center for Assisted Living

*John Fann*  
AARP MICHIGAN

*Kateleen Murphy*  
Michigan Assisted Living Assoc.

*W.C. Furrer*  
Mental Resources Centers, Inc.  
W.C. Furrer Living Centers, Inc.

*Karen LaFave*  
Adult Learning Syst.

*Hollis Fisher*  
Paraprofessional Healthcare Inst.

*Laura L. Farnam, Executive Director*  
BEAM

*Sarah Stocem, State LTC Ombudsman*  
*David E. Bialak Michigan Association of Home and Service to the Aging*





OCT 28 RECD

JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF HUMAN SERVICES  
LANSING

MARIANNE UDOW  
DIRECTOR

October 26, 2005

Linda I. Lawther  
President/CEO  
Michigan Center for Assisted Living  
PO Box 80050  
Lansing MI 48908

Dear Ms. Lawther:

This is in response to the October 6, 2005 letter you and other participants of an ad hoc rules workgroup wrote to Marianne Udow expressing concern that not enough time was being devoted to addressing the Long Term Task Force Recommendations in revising proposed administrative rules. In your view, the workgroup should have continued meeting to more fully address the recommendations and the proposed rule sets.

The Long Term Care Task Force identified many important public policy and regulatory issues, some of which were addressed during the course of the ad hoc rules workgroup. However, the recommendations of the Long Term Task Force were much broader than the subject matter of the proposed rules the workgroup was formed to address.

Over the course of the eight work sessions, the group gathered preliminary comments from the participants regarding the various sets of draft rules. The participants were given the opportunity to discuss the proposed rules, and were also encouraged to submit written suggestions and concerns. No participants submitted revised language. However, the department intends to weigh the verbal comments presented and use the language best suited to address the concerns raised.

While the mission of the ad hoc workgroup may be completed, the process for promulgating these rules has just begun. Before a rule is adopted, the public has an opportunity to present data, views, questions, and arguments at a public hearing. Moreover, the notice scheduling the hearing will include a statement describing in what manner data, views, questions, and arguments may be submitted to the agency at other times.

The wide range of backgrounds the participants brought to the workgroup enhanced the work accomplished thus far in gathering preliminary comments about the draft rules. Although it was not possible to gain consensus of opinion on every issue, each participant was given an opportunity to make comments, which are reflected in the minutes of each meeting.

Thank you for your continued efforts on behalf of the vulnerable adults in our state.

Sincerely,

A handwritten signature in black ink, appearing to read "Musette Michael". The signature is fluid and cursive, with a large, stylized initial "M".

Musette Michael, Deputy Director  
Legal Affairs and Financial Integrity

c:

Andrew Farmer  
AARP

Kathleen Murphy  
Michigan Assisted Living Association

Avant Roman  
Mental Resource Center

Hollis Turnham  
MI Paraprofessional Health Care Institute

Laura Ferrara, Executive Director  
BEAM, Inc.

Sarah Slocum  
State Longterm Care Ombudsman

Karen LaFave  
Adult Learning Systems

David Herbel  
Michigan Association of Homes and Services for the Aging

# Guiding Principles for HCAM Members

1. **Substandard care shall not be tolerated.** Providers and families share with the State, the responsibility to protect and promote the health, safety and welfare of our customers. HCAM stands ready to assist any member who requests assistance in addressing quality of care issues.
2. **Customer satisfaction is the most important basis for defining quality.** Our customers are the residents and their families.
3. **Customer satisfaction driven criteria should replace the current government regulatory model for assuring high quality care and resident satisfaction.**
4. **The customers' need for long-term care services should be assessed and the necessary resources (public and private) committed to meeting these needs.** The State has a responsibility to ensure appropriate resources to enable providers to meet the goal of furnishing quality services to our customers.
5. **Competition should be encouraged among providers to deliver cost effective, high quality services along the entire continuum of care.** Regulatory mechanisms should not restrict these market forces from assuring the highest level of customer satisfaction. Providers need flexibility to deliver services effectively and efficiently. Customers demand and appreciate such flexibility to meeting their unique needs.
6. **Customers need to be informed about the costs and outcomes of long term care services so that they can make the most informed choice possible.**
7. **Customers should have the right to choose the most appropriate setting for the delivery of LTC services and these options should be encouraged by public policy.** To ensure that customers have access to the most appropriate level of care, there should be a "level playing field" wherein providers of similar services have equal access to markets and are regulated and reimbursed similarly.
8. **Broad based legislation to address isolated behaviors is inappropriate, particularly when available remedies have not been exhausted.**
9. **Any legislative changes should be based on sound information with assurances of enhanced quality of care and customer driven satisfaction.**
10. **Uniform standards should be promoted.** State regulations should be no more stringent than existing federal requirements.

Adopted January 17, 1996

Since 1974, the mission of HCAM has been to enhance members' ability to provide quality client services through a collective effort to educate, disseminate information and provide leadership in the shaping of private and public privacy.

HCAM represents the interests of nearly 400 nursing homes and vendor companies throughout the state.



## **GUIDING PRINCIPLES FOR MCAL** ***Michigan Center for Assisted Living***

1. Quality of Service should be defined by our customers, the resident and their family members.
2. Full disclosure of services, self-regulation and market forces are the best ways to ensure **quality of service**.
3. Customers should be involved in legislative policy decisions affecting their lives.
4. Customers should choose their services and lifestyles and accept the risks associated with those choices.
5. Cost-effective quality services should be delivered in a safe residential environment.
6. Creative and flexible venues, approaches and resources should be used to personalize services for each individual customer.
7. Visual and procedural characteristics of the assisted living community should emphasize a residential setting.
8. The assisted living community, while health-care related, should focus on a supportive environment designed to maintain an individual's ability to function independently for as long as possible.
9. Services, whether provided or coordinated, should be designed to support and enable the customer to "age with choice".

### **MCAL Mission:**

To develop and sustain an Assisted Living culture which emphasizes the fundamental values of autonomy, dignity, individuality, and privacy through effective communicative tools, advocacy, and service.

MCAL is an association of Housing with Services Communities, Homes for the Aged, Adult Foster Care and Independent Senior Housing Providers in Michigan. MCAL is also a resource for consumer education and information. You may contact MCAL by calling 517.627.1561 or by email at [mcald@hcam.org](mailto:mcald@hcam.org). Linda I. Lawther, President / CEO; Dean Solden, Board Chair

**MACMHB**

# ABOUT MACMHB

[Home](#)[Contact Us](#)[Conferences &  
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Training Project](#)[Values & Visions](#)

## Mission Statement

The ***Michigan Association of Community Mental Health Boards*** was created in 1967 to support county mental health services programs (CMHSPs) in promoting, maintaining and improving a comprehensive range of community-based mental health services, which enhance the quality of life, promote the emotional well-being, and contribute to healthy and secure communities which benefit all of Michigan's citizens. Services managed and delivered by CMHSPs are designed to assist individuals in achieving, maintaining and maximizing their potential and are provided in accordance with the principles of person centered planning.

Membership in the Association is open to all forty-nine CMHSPs which cover all 83 counties in Michigan. CMH Board Members and Executive Directors of member boards serve on the Association's Executive Board and on a variety of committees which study issues affecting the public mental health system.

The Michigan Association of Community Mental Health Boards takes part in a variety of activities to support CMHSPs including:

- Improving the quality and accessibility of community-based public mental health services
- Exploring problems of common interest to CMHSPs and providing opportunities for exchange of ideas
- Promoting effective relationships between CMHSPs and the Governor, the Legislature, and advocacy groups
- Providing a means by which CMHSPs may speak as a group on matters affecting Michigan's public mental health system
- Enhancing public awareness of and support for community mental health programs

CMHSPs are established by the Mental Health Code — Act 258 of the Public Acts of 1974 as amended. These single or multi-county boards are responsible for planning, monitoring, and implementing mental health programs for persons with mental illness and developmental disabilities. Mental health professionals provide services 24 hours a day - regardless of ability to pay.

As the gatekeepers of the public mental health system, CMH provides individualized planning for the mental health care of county residents. Your local community mental health board is there when you need them because mental illness and developmental disabilities can affect anyone.



# Michigan Assisted Living Association

15440 Middlebelt Road - Livonia, MI 48154 - Tel: (800) 482-0018 - Fax: (734) 525-2153

## MALA Amendments to its Recommendations on New Criminal History Record Check Law

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Michigan Assisted Living Association (MALA) is a nonprofit organization representing 4,200 assisted living and vocational services programs serving 40,000 individuals statewide. The persons receiving services are persons with developmental disabilities, psychiatric disabilities, physical disabilities or closed head injuries or persons who are elderly.



Originally incorporated in 1967 as Statewide Care Home Association, the Association has grown dramatically during the past 38 years. MALA is a state affiliate of the national Assisted Living Federation of America (ALFA). Together, the state and national associations promote high quality assisted living services to persons with varying needs.

MALA is governed by a 12 member Board of Directors representing the state on a regional basis. The Association's administrative staff includes four attorneys, a membership services director, and various support staff. MALA's membership benefits include monthly newsletters and special reports, legal consultation, legislative advocacy and training programs.



In addition to these extensive membership benefits, MALA sponsors several excellent group insurance programs. These group programs are administered by MALA's affiliated entity, Michigan Assisted Living Insurance Services.

The Association is actively involved in legislative issues and other developments affecting the assisted living field. We look forward to assisting providers in assuring high quality services in the upcoming years.

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